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Territorial Extension in EU Sanctions Law: Theory and Practice in the Context of the Russia Sanctions.

Pierpaolo Manfredi*

This article examines the ways in which the European Union's sanctions regimes extend jurisdiction beyond the boundaries of European legal order, with particular reference to the 19th sanction package adopted against Russia. It is argued that this phenomenon is best understood through the lens of territorial extension theory, rather than pure extraterritoriality. After reconstructing the doctrinal distinction between these two legal categories, the article traces the evolution of territorial extension theory in European Union practice, highlighting the emergence of new jurisdictional triggers that enable the European Union to bring within its jurisdiction conduct occurring entirely abroad. This theoretical framework is then assessed in light of the recent European Union sanctions against Russia, identifying the fundamental role of safety valves as a condition of legitimacy of the European Union's external action, in accordance with the principle of proportionality and the value of the rule of law.

Key words: restrictive measures; territorial extension; extraterritoriality; sanctions circumvention; principle of proportionality; rule of law; European Union law; International law.

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Introduction

Academic interest that surrounds restrictive measures of the European Union (hereinafter: EU) is justified on both quantitative and qualitative grounds. As regards to the former, the EU currently maintains approximately fifty sanctions regimes, targeting around six thousand individuals and entities located across various regions of the world¹: these statistics clearly reflect the now systemic role of restrictive measures within the EU's external action. As regards to the qualitative dimension, a doctrinal analysis on restrictive measures is warranted from several perspectives. Indeed, on the substantive and procedural level, restrictive measures raise numerous legal questions, not only concerning their constitutional dimension and the jurisdiction of the Court of Justice of the European Union (hereinafter: the Court of Justice), but also with regard to their impact on individuals and, ultimately, the protection of fundamental rights.²

Alongside these crucial issues, there is another rising question that is equally relevant to a full understanding of the complex nature and scope of restrictive measures. This concerns the external dimension of the EU's sanctions regimes and, more specifically, the ability of restrictive measures to shape the conduct of non-European economic operators.

¹ Council of the European Union, "Sanctions: How and When the EU Adopts Them", <https://www.consilium.europa.eu/it/policies/sanctions-different-types/>.

² For a general overview of the EU's external action and the CFSP framework, see R. Schütze, *European Union Law*, 4th edn (Oxford: Oxford University Press, 2025), pp.227–351; K. Lenaerts, P. Van Nuffel and T. Corthaut, *EU Constitutional Law*, 3rd edn (Oxford: Oxford University Press, 2021), pp.337 ff. On restrictive measures specifically, see C. Beaucillon, *Les mesures restrictives de l'Union européenne* (Brussels: Bruylant, 2014); P. Koutrakos, "Judicial Review in the EU's Common Foreign and Security Policy" (2018) 67 *International and Comparative Law Quarterly*, pp. 1-35. For relevant case law, see *Kadi and Al Barakaat International Foundation v Council and Commission* (C-402/05 P and C-415/05 P) EU:C:2008:461; *PJSC Rosneft Oil Company v Her Majesty's Treasury and Others* (C-72/15) EU:C:2017:236.

As a general matter, the implementing regulations of restrictive measures define their scope of application through traditional jurisdiction criteria, such as the territory of the EU, the nationality of one of the Member States, or the incorporation of legal persons under the law of a Member State³. However, in practice, EU sanctions have demonstrated the capacity to produce compliance effects also upon entities established in third countries, which are not formally bound by the European legal order. This is well illustrated by the number of non-European multinationals that withdrew from the Russian market following Russia's invasion of Ukraine, with the reasons for such conduct being identified primarily in reputational considerations and the need to preserve commercial relationships with Western markets⁴.

This phenomenon therefore raises a significant question as to how the EU sanctions influence the conduct of economic operators falling outside the EU's jurisdiction. Understanding this characteristic of restrictive measures requires an examination of the legal techniques through which the EU establishes a jurisdictional *nexus* with situations that are not territorially linked to the EU legal order.

In light of these considerations, this article argues that the concerned phenomenon is best framed within the theory of the territorial extension⁵, which describes how a jurisdiction projects its rules beyond its own legal order, without constituting instances of pure extraterritoriality. To this end, the article first examines the doctrinal distinction between

³ These jurisdictional criteria are enshrined in what is commonly referred to as the “standard jurisdictional clause”: see art. 17 of Council Regulation (EU) No. 269/2014 and art. 13 of Council Regulation (EU) No. 833/2014.

⁴ See P.H. Verdier, “Sanctions Overcompliance: What, Why, and Does It Matter?” (2023) 48 North Carolina Journal of International Law 471; Yale School of Management, “Over 1,000 Companies Have Curtailed Operations in Russia—But Some Remain” (*som.yale.edu*) <https://som.yale.edu/story/2022/over-1000-companies-have-curtailed-operations-russia-some-remain>; “Israeli Finance Minister Says Banks Should Not Obey EU Sanctions on Settlers”, *Reuters*, 5 June 2025; “New Bank of Israel Directive: Banks May Restrict Accounts of Sanctioned Israelis”, *Lexology*, 8 January 2026.

⁵ The theory of territorial extension was developed by Joanne Scott. On the subject, see J. Scott, “The Global Reach of EU Law” in M. Cremona and J. Scott (eds), *EU Law Beyond EU Borders: The Extraterritorial Reach of EU Law* (Oxford: Oxford University Press, 2019); J. Scott, “Extraterritoriality and Territorial Extension in EU Law” (2014) 62 American Journal of Comparative Law 87; J. Scott, “The New EU Extraterritoriality” (2014) 51 Common Market Law Review 1343.

territorial extension and pure extraterritoriality, reconstructing its theoretical foundations. It then analyses the evolution of territorial extension theory, identifying new jurisdictional triggers through which the EU extends its jurisdiction beyond the boundaries of European legal order. Subsequently, the theoretical framework outlined is assessed against the most recent EU sanctions practice in relation to Russia. Finally, the article examines the safeguard mechanisms embedded in sanctions regimes as instruments ensuring the proportionality of EU external action and its compliance with the value of the rule of law⁶.

The distinction between pure extraterritoriality and territorial extension

Within the European legal order, the concept of extraterritoriality is inherently ambiguous and lacks a uniform definition, being frequently used in an inconsistent manner to describe divergent concepts⁷. Nevertheless, this article adopts the definition whereby pure extraterritoriality refers to the phenomenon by which the law of a jurisdiction applies to conduct regardless of the existence of a relevant territorial link with that jurisdiction⁸. This is the case, for instance, where the EU imposes legal obligations on persons or entities that have no significant territorial *nexus* with the European legal order.⁹

⁶ The rule of law is enshrined in Art. 2 TEU and reinforced in Art. 21 TEU, emerging as the cornerstone of the EU. For a general overview see A. Circolo, *Il valore dello Stato di diritto nell'Unione europea: violazioni sistemiche e soluzioni di tutela*, Napoli, 2023; A. Von Bogdandy, L. D. Spieker, *Breathing Life into the Union's Common Values: On the Judicial Application of Article 2 TEU in the EU Value Crisis*, in *German Law Journal*, vol 20, Issue 8, Cambridge University Press, 2019, pp. 1182 - 1213 On the rule of law in the EU's external action see: L. Lonardo, *Common Foreign and Security Policy and the EU's external action objectives: An analysis of article 21 of the Treaty on the European Union*, in *European Constitutional Law Review*, 14(3), pp. 584-608

⁷ L. Hornkohl, "The Extraterritorial Application of Statutes and Regulations in EU Law" (Max Planck Institute Luxembourg for Procedural Law, February 2022); R. Bismuth, "The European Union Experience of Extraterritoriality: When a (Willing) Victim Has Become a (Soft) Perpetrator" in A. Parrish and C. Ryngaert (eds), *Research Handbook on Extraterritoriality in International Law* (Cheltenham: Edward Elgar Publishing, 2023), pp.118–132; P. Szigeti, "In the Middle of Nowhere: The Futile Quest to Distinguish Territoriality from Extraterritoriality", in D. S. Margolies, U. Özsü, M. Pal, N. Tzouvala, *The Extraterritoriality of Law: History, Theory, Politics* (Milton Park: Routledge 2019), 30-49. On the terminology of "jurisdiction" in public international law, see C. Ryngaert, *Jurisdiction in International Law*, 2nd edn (Oxford: Oxford University Press, 2015).

⁸ Ryngaert, *Jurisdiction in International Law*, p.5.

⁹ J. Scott, "Extraterritoriality and Territorial Extension in EU Law" (2014) 62 *American Journal of Comparative Law* 87, 89–90.

Historically, the EU has expressed a firm opposition to the adoption of purely extraterritorial measures by third States, evoking the duty to respect international legality and the principles of jurisdiction under international law¹⁰. This position emerged particularly in 1982, when the United States prohibited the export of certain goods and technologies to European companies involved in the Trans-Siberian pipeline project with the USSR: the European Communities argued that States should not exercise personal jurisdiction over objects on the basis of their origin once those objects have left the territory of the State of origin. However, it was not until 1996 that the EU took concrete legislative action to counter such extraterritorial measures, adopting the so-called Blocking Regulation (Regulation (EC) No. 2271/96) designed to protect European economic operators from the extraterritorial application of US sanctions targeting Iran and Cuba. This stance, which has been described in the literature as “*jurisdictional puritanism*”¹¹, is nowadays crystallised in the Council Guidelines on sanctions, which state that the EU “*will refrain from adopting legislative instruments having extra-territorial application in breach of international law*”¹².

It is precisely in this context that the more sophisticated legal technique of territorial extension emerges, with varying degrees of explicitness, from the EU’s regulatory practice¹³. Unlike pure extraterritoriality, indeed, territorial extension in its classical variant occurs when

¹⁰ R. Bismuth, “The European Union Experience of Extraterritoriality: When a (Willing) Victim Has Become a (Soft) Perpetrator” in Parrish and Ryngaert (eds), *Research Handbook on Extraterritoriality in International Law*, pp.118–132; R. Bismuth and J. Dunin-Wasowic, “Towards a New Extraterritoriality of EU Sanctions?” in C. Zilioli, R. Bismuth and L. Thévenoz (eds), *International Sanctions: Monetary and Financial Law Perspectives* (Oxford: Oxford University Press, 2021), pp.126 ff.; European Communities, “Comments on US Regulations Relating to Trade with the USSR” (1982) 21 *International Legal Materials* 891; Hornkohl, “The Extraterritorial Application of Statutes and Regulations in EU Law”, p.29; *Bank Melli Iran v Telekom Deutschland GmbH* (C-124/20) EU:C:2021:1035 at [91].

¹¹ Bismuth, “The European Union Experience of Extraterritoriality: When a (Willing) Victim Has Become a (Soft) Perpetrator”, p.133.

¹² Council of the European Union, *Guidelines on Implementation and Evaluation of Restrictive Measures (Sanctions) in the Framework of the EU Common Foreign and Security Policy* (4 May 2018), para.52, <https://data.consilium.europa.eu/doc/document/ST-5664-2018-INIT/en/pdf>.

¹³ L. Lonardo, The Extraterritorial Reach of EU Law: A Matter of External Trust?, in F. Casolari, M. Gatti, eds., *The application of EU Law Beyond Its Borders*, CLEER PAPERS, 2022/3, p. 9 ff.; A. L. Parrish, “Reclaiming International Law from Extraterritoriality” (2009) 93 *Minnesota Law Review*. 815, 818.

the application of a measure is triggered by a territorial link with the regulating State, but in applying that measure, the regulator is legally required to take into account conduct or circumstances occurring abroad¹⁴. In this way, the scope and means of the exercise of regulatory power are anchored to the territorial sphere of the regulating framework, albeit with due regard to external elements.

A paradigmatic illustration of classical territorial extension is identified by legal scholars in the *Air Transport Association of America* judgement¹⁵, which concerned the validity of Directive 2008/101, extending the greenhouse gas emission trading scheme (hereinafter: ETS) to the aviation sector¹⁶. Under the ETS, operators are required to surrender annually a number of emission allowances corresponding to their actual emissions, within an overall cap set by the EU. In this regard, the American airlines challenged the extraterritorial scope of the Directive on the ground that it required them to purchase emission allowances for the entire duration of their flights, including segments flown over the territory of third States and international waters. However, in this case, the applicability of the Directive in question was justified on the basis of a strictly territorial link with the EU: the Court of Justice clarified that aircraft registered in third States are subject to the ETS only insofar as they take off from or land on the territory of the EU¹⁷. However, once jurisdiction has been established by virtue of that territorial *nexus*, EU law operates an extension of its regulatory reach, requiring that conduct or circumstances occurring abroad be taken into account: accordingly, the calculation of emission allowances includes emissions released outside the European airspace, effectively transforming access to

¹⁴J. Scott, “Extraterritoriality and Territorial Extension in EU Law” (2014) 62 *American Journal of Comparative Law* 87, 90.

¹⁵ *Air Transport Association of America and Others v Secretary of State for Energy and Climate Change* (C-366/10) EU:C:2011:864.

¹⁶ Directive 2008/101/EC of the European Parliament and of the Council of 19 November 2008 amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community, <https://eur-lex.europa.eu/eli/dir/2008/101/oj/eng>.

¹⁷ *Air Transport Association of America and Others v Secretary of State for Energy and Climate Change* (C-366/10) EU:C:2011:864 at [132]–[134].

EU airport infrastructures into a lever for regulating the overall environmental impact of the activity as a whole. Ultimately, the Court of Justice upheld the legality of a measure that considered conduct occurring outside of the EU territory, on the ground that the factor justifying its application was strictly territorial in nature, the measure being applicable solely to flights arriving at or departing from the Union¹⁸.

These observations suggest that the doctrinal distinction between pure extraterritoriality and classical territorial extension is based on the nature of the trigger that activates the jurisdiction. Accordingly, within the framework of the classical territorial extension, the trigger is formally anchored to the principle of territoriality, yet the content of the regulation requires the competent authority to take into account facts, conduct, or rules arising outside the jurisdiction of the EU.

The evolution of the theory of territorial extension

Legal scholars observed that, normally, the reasons underlying territorial extension are largely internal in nature and relate to the need to protect the internal market, financial stability or the fundamental values of the EU¹⁹. However, it is precisely through this mechanism that the EU become able to influence “*the nature and content of third country and international law*”²⁰.

¹⁸ Scott, “The New EU Extraterritoriality” (2014) 51 *Common Market Law Review* 1343, 1345; see also . Dobson, “Extraterritorial Climate Protection Under International Law: A Jurisdictional Analysis of EU Unilateralism” (PhD thesis, Utrecht University 2018), chapter 2.3, at 62.

¹⁹ Scott, “The Global Reach of EU Law” in Cremona and Scott (eds), *EU Law Beyond EU Borders*, 29; C. Benini observed that “[t]he EU legislator enlarges the scope of application of its own laws to encompass within that scope events occurring beyond its territorial boundaries only if it is necessary for the pursuit of a specific EU policy goal”, A Private International Law Perspective On The Extraterritorial Reach of EU Law: The “Docile” Attitude of EU Conflict of Law Rules, in F. Casolari, M. Gatti, eds., *The application of EU Law Beyond Its Borders*, *CLEER PAPERS*, 2022/3, 26-27. In this way, competences are conferred upon the EU as instruments directed toward the attainment of specific policy aims, as noted by G. Tesauro *et al.*, *Manuale di diritto dell’Unione europea* (Naples: Editoriale Scientifica, 2018) 44: see Article 5 (2) TEU.

²⁰ Scott, “Extraterritoriality and Territorial Extension in EU Law” (2014) 62 *American Journal of Comparative Law* 87; see A. Navasartian Havani, *Carrots or Sticks? How The European Union Aims To Achieve Respect For Fundamental Rights Beyond Its Borders*, in in F. Casolari, M. Gatti, eds., *The application of EU Law Beyond Its Borders*, *CLEER PAPERS*, 2022/3, 74: “dialogue, financial aid and restrictive measures are indeed interconnected, pursuing the same intended outcome of a change in behaviour within the third country with regard to human rights and an alignment with EU values.”. On the use of

It should come as no surprise, therefore, that the classical framework of the theory of territorial extension, which is closely linked to the existence of a territorial nexus, has undergone a significant evolution. Indeed, although the EU has formally maintained an approach anchored to the principle of territoriality, at the same time it has progressively integrated new connecting factors into its regulatory practice: these, in particular, would attract conduct occurring entirely abroad within the scope of application of EU law, imposing “*over-border obligations to non-EU persons*”²¹.

In this regard, the most recent legislative practice reveals jurisdictional mechanisms that are more sophisticated than the traditional principle of territoriality. However, these mechanisms operate within a “*contested transition zone*”²² between extraterritoriality and territoriality, responding to the need to regulate complex phenomena arising in markets shaped by global interdependence, particularly in the financial sector²³. In this context, four main new connecting factors have emerged: the effects doctrine, the property principle, the counterparty principle and the anti-evasion clauses. For the purposes of this article, the analysis will focus on the latter two, as they are most relevant to the EU’s sanctions regimes.

As regards the anti-evasion clauses, these represent mechanisms aimed at extending European jurisdiction to foreign conduct carried out primarily to circumvent EU rules through artificial arrangements. A paradigmatic example is provided by the EMIR Regulation

territorial connection as a lever to influence foreign legislation, see also I. Agnolucci, *The Extraterritorial Extension of EU State Aid Rules to the UK*, in F. Casolari and M. Gatti (eds.), *The Application of EU Law Beyond Its Borders*, CLEER Papers 2022/3, 230.

²¹ Scott, “The New EU Extraterritoriality” (2014) 51 *Common Market Law Review* 1343, 1344.

²² Scott, “The New EU Extraterritoriality” (2014) 51 *Common Market Law Review* 1343, 1379. A critical stance regarding the distinction between territoriality and extraterritoriality can be found in Péter D. Szigeti, *In the middle of nowhere: the futile quest to distinguish territoriality from extraterritoriality*, in D. S. Margolies et al. (eds.), *The Extraterritoriality of Law*, Routledge, 2019, 30 ff; see also R. Bismuth, *Au-delà de l’extraterritorialité, une compétence économique*, in SFDI (eds.), *L’extraterritorialité*, Pedone, 2020, 13 ff.

²³ Scott, “The New EU Extraterritoriality” (2014) 51 *Common Market Law Review* 1343; D.C. Royero Ávila, *Global Reach of EU Law in Financial Legislation*, in F. Casolari, M. Gatti, (eds.), *The Application of EU Law Beyond Its Borders*, CLEER Papers 2022/3, 169 ff; M. Cremona, *Extending the Reach of EU Law: The EU as an International Legal Actor*, in M. Cremona and J. Scott (eds.), *EU Law Beyond EU Borders: The Extraterritorial Reach of EU Law*, (Oxford: Oxford University Press 2019), 64-111, at 105; R. Bismuth, *The New Frontiers of European Sanctions and the Grey Areas of International Law*, *Revue Européenne Du Droit*, Issue 5, 2023, 11.

(Regulation (EU) No. 648/2012 on OTC derivatives), which imposes clearing and risk mitigation obligations on those concluding certain derivative contracts, and explicitly extends those obligations to third-country entities where necessary or appropriate to prevent evasion of the Regulation itself²⁴. According to legal scholars, the distinctive feature of this novel trigger lies in the fact that it concerns arrangements lacking any economic substance and created solely to sever the jurisdiction *nexus* with the EU²⁵: however, the classification of this trigger in terms of territoriality is considerably complex; indeed, while the conclusion of artificial arrangements aimed at circumventing the territorial *nexus* embedded in EU legislation may be sufficient to establish territorial jurisdiction, it appears that, in relation to this trigger, the EU operates on a functional basis, independently of any direct physical connection.

Turning to the counterparty principle, it represents the most sophisticated development in that it constitutes a relational trigger. Under this mechanism, a third-country entity becomes subject to obligations under EU law not by virtue of a territorial *nexus*, but by reason of its legal relationship with a subject holding a qualified connection with the EU. This is illustrated by the EMIR Regulation, which imposes clearing obligations on third-country entities entering into transactions with European entities, thereby subjecting them to EU law solely by virtue of their relational connection with a European counterparty²⁶. Consider, for instance, a third-country entity acting as counterparty to transaction with a party established within the EU: in such a case, obligations arise on account of the indirect connection to EU legal order, which stems from the legal relationship with a European counterparty.

Finally, it is worth noting that within this evolution of the theory of the territorial extension, legal scholars have highlighted the emergence of a phenomenon of decoupling

²⁴ Council Regulation (EU) No 648/2012 of 4 July 2012 on OTC derivatives, central counterparties and trade repositories [2012], arts 4(1)(a) and 11(12), <https://eur-lex.europa.eu/eli/reg/2012/648/oj/eng>.

²⁵ See Scott, "The New EU Extraterritoriality" (2014) 51 Common Market Law Review 1343, 1375.

²⁶ Council Regulation (EU) No 648/2012, art.4(1)(iv).

between triggers and the interests protected by the regulation. Whereas, as previously observed, the underlying rationale of the classical variant of territorial extension is primarily internal, its evolution has led the EU to deploy novel triggers to pursue global objectives and to protect interests situated beyond its territory as well, such as the promotion of human rights and the protection of the environment²⁷. In conclusion, this evolution demonstrates how the EU has refined its legal instruments to overcome the limits of the classical variant of the theory of territorial extension: indeed, the use of new triggers, together with their decoupling from the protected interests, reflects the capacity of the EU law to project itself beyond the European borders, thereby bringing within its scope of application conducts that take place entirely outside its territory.

However, this practice is not without drawbacks, among which a central concern lies in the fact that the same situation may be simultaneously governed by the law of the State in which it occurs and by the EU legal order. In practical terms, economic operators may face a scenario of concurrent and conflicting legal regimes, resulting in legal uncertainty²⁸. For these reasons, legal scholars have observed that EU measures incorporating triggers capable of extending jurisdiction frequently include safety valves, namely clauses intended “*to prevent jurisdictional over-reach and to facilitate cooperation and to reduce conflict between States.*”²⁹.

In this regard, contingency and contextuality emerge as key safeguarding mechanisms, reflecting the operation of the principle of proportionality in relation to legal instruments that

²⁷ Bismuth, “The European Union Experience of Extraterritoriality: When a (Willing) Victim Has Become a (Soft) Perpetrator” in Parrish and Ryngaert (eds), *Research Handbook on Extraterritoriality in International Law*, 128 ff.

²⁸ See Scott, “The New EU Extraterritoriality” (2014) 51 *Common Market Law Review* 1343, 1364 ff; see also P.H. Verdier, “Sanctions Overcompliance: What, Why, and Does It Matter?” (2023) 48 *North Carolina Journal of International Law* 471; . Bismuth, *Au-delà de l’extraterritorialité, une compétence économique*, in SFDI (eds.), *L’extraterritorialité*, Pedone, 2020.

²⁹ Scott, “The New EU Extraterritoriality” (2014) 51 *Common Market Law Review* 1343, 1365.

generate cross-border obligations³⁰. Moreover, these mechanisms are intended to foster dialogue and cooperation between EU institutions and those of third States, rather than promoting the unilateral application of EU rules to foreign situations, thereby manifesting a dialogic and dynamic character.

As for contingency, this safety valve is generally described as a concept which captures and expresses the provisional character of EU regulation. It implies that if the EU insists on applying its rules to a given foreign situation, it is equally prepared to consider their non-application, or disapplication, where the same situation is adequately regulated by the law of the State in which it occurs³¹. As for contextuality, it requires that the application of EU law be made conditional upon a case-by-case assessment of the specific situation in order to verify whether the relevant conditions are met³², and it thus emerges specifically in relation to anti-evasion clauses. In this regard, legal scholars have argued that contextuality entails a duty to provide reasons on the EU, so as to ensure that the application of EU law to a given foreign situation is genuinely necessary in light of the objectives pursued by the relevant regulatory framework³³.

³⁰ The principle of proportionality is a general and inherent principle of EU law enshrined in Article 5(4) TEU and Article 52(1) of the Charter of Fundamental Rights of the European Union: see M. Terlinden, *Recent developments in the sanctions practice of the European Union: A Proportionality Review*, Leuven Centre for Global Governance Studies, Working Paper no. 244 – June, 2024, 11 ff.; R.A. Wessel, J. Larik, *Eu External Relations Law. Text, Cases and Materials*, II eds., Hart Publishing, 2020, 30 ff. In this way, the proportionality the “premise of governance seeking to limit the scope and intensity of EU action” : T. Tridimas, (2018) The Principle of Proportionality, in Schütze R, Tridimas T (eds), *Oxford Principles Of European Union Law: The European Union Legal Order: Volume I*, OUP, Oxford, 244

³¹ On contingency, see: Scott, “The New EU Extraterritoriality” (2014) 51 *Common Market Law Review* 1343, 1366. In this regard, a significant example can be found in Council Regulation (EU) No 648/2012, art.13(2) which provides that the Commission has the power to adopt implementing acts declaring that the legal, supervisory and enforcement framework of a third country is equivalent to that laid down in the Regulation.

³² Scott, “The New EU Extraterritoriality” (2014) 51 *Common Market Law Review* 1343, 1367; see also Council Regulation (EU) No 648/2012, art.11(14)(e), which confirms that the application of EU law to foreign situations is subject to a contextual, case-by-case assessment rather than rigidly predetermined criteria.

³³ Scott, “The New EU Extraterritoriality” (2014) 51 *Common Market Law Review* 1343, 1368. This requirement to provide reasons is described as one of the founding principles of the EU by A. MAFFEO, *L’obbligo di motivazione degli atti delle istituzioni dell’Unione europea letto attraverso la giurisprudenza della Corte di giustizia*, in *federalismi.it*, n.3/2018, 7; see also S. POLI, *L’evoluzione del controllo giurisdizionale sugli atti PESC intesi a consolidare la rule of law: il caso delle misure restrittive sullo sviamento di fondi pubblici*, DUE, 2/2019, 301 ff.

In conclusion, it follows that the existence of these safeguard mechanisms reflects an approach that cannot be characterised as purely extraterritorial: on the one hand, safety valves are dialogic in nature, insofar as they stimulate cooperation between EU authorities and those of third States; on the other hand, they are dynamic in nature as well, insofar as the scope of application of the relevant measure may be adjusted to the factual circumstances so as to prevent the evasion of the applicable rules.

The evolved theory of territorial extension and EU restrictive measures

The theoretical framework described above provides an interpretative lens for the EU's most recent sanctions practice, illuminating the way EU sanctions influence the conduct of economic operators falling outside the European jurisdictional reach. In this regard, legal scholars have observed that the EU's sanctions adopted in response to Russia's invasion of Ukraine deploy several of mechanisms that transcend the territoriality principle as a basis for establishing jurisdiction³⁴. By way of preliminary observation, it may be noted that the sanctions regime in question relies on both techniques of classical territorial extension (grounded in traditional territorial criteria), and on techniques of evolved territorial extension (deploying novel jurisdictional triggers), so that two distinct levels of analysis may be drawn.

With regard to the first dimension, the EU regulations implementing restrictive measures contain a standard jurisdiction clause³⁵, which typically defines five jurisdictional criteria: *i*) the territory of the EU; *ii*) the airspace and any aircraft or vessel under the jurisdiction of a Member State; *iii*) the EU nationality; *iv*) the incorporation of a legal person under the law

³⁴ See Bismuth and Dunin-Wasowic, "Towards a New Extraterritoriality of EU Sanctions?" in Zilioli, Bismuth and Thévenoz (eds), *International Sanctions: Monetary and Financial Law Perspectives*, pp.121 ff.; Council of the European Union, "19th Package of Sanctions against Russia" (23 October 2025), <https://www.consilium.europa.eu/en/press/press-releases/2025/10/23/19th-package-of-sanctions-against-russia-eu-targets-russian-energy-third-country-banks-and-crypto-providers/>.

³⁵ See art.17 of Council Regulation (EU) No.269/2014 and art.13 of Council Regulation (EU) No.833/2014.

of a Member State; v) the conduct of any business, in whole or in part, within the EU³⁶. The first four criteria reflect the principles of territoriality and active personality, which are traditionally recognised in international law and do not raise controversial issues regarding the exercise of jurisdiction. By contrast, the fifth criterion requires further scrutiny, as it constitutes the prototype of the classical variant of territorial extension, as it represents a conduct-based trigger³⁷. Accordingly, in the sanctions against Russia, the EU deploys this criterion as an instrument to bring within its jurisdictional reach the conduct of third-country economic operators occurring outside its borders. A paradigmatic example can be found in the area of financial transactions, in relation to which the Commission has clarified that, although the sanctions do not, as such, apply extraterritorially to entities of third States operating entirely outside the EU, the territorial *nexus* activating the EU's jurisdiction is triggered where such entities carry out payments or transactions which pass, even momentarily, through the EU's financial system or use the euro as a currency³⁸. In such circumstances, the third-country operator is accordingly required to comply with the EU's sanction framework, failing which it risks being excluded from accessing the European financial market.

On the second level of analysis, it emerges that EU's sanctions regimes deploy techniques of territorial extension which rely on novel triggers that go beyond those traditionally anchored to the principle of territoriality, including anti-evasion clauses and the counterparty principle.

³⁶ See C. Beaucillon, "The European Union's Position and Practice with Regard to Unilateral and Extraterritorial Sanctions" in C. Beaucillon (ed), *Research Handbook of Unilateral and Extraterritorial Sanctions* (Cheltenham: Edward Elgar Publishing, 2022), pp.111 ff.

³⁷ H. Kramer, "Extraterritoriale Wirkungen des Unionsrechts — eine normanalytische Skizze" (2021) EuR 137, 142; Hornkohl, "The Extraterritorial Application of Statutes and Regulations in EU Law", pp.17 ff.

³⁸ Directorate-General for Financial Stability, Financial Services and Capital Markets Union, *Consolidated FAQs on the Implementation of Council Regulation No 833/2014 and Council Regulation No 269/2014* (finance.ec.europa.eu) https://finance.ec.europa.eu/publications/consolidated-version_en: "[h]owever, if the same company imports the products via the Union or carries out payments in the Union, then it has to comply with EU sanctions as it is entering the EU internal market".

As regards anti-evasion clauses, it should first be observed that Article 12 of Regulation 833/2014, concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, prohibits participation, "*knowingly and intentionally, in activities the object or effect of which is to circumvent the prohibitions*" laid down in the Regulation. According to the Court of Justice, the requirements of knowledge and intent are satisfied where the person participating in an activity subject to restrictive measures "*deliberately seeks the object or the effect, direct or indirect, of circumvention connected therewith. They are also met where the person in question is aware that his participation in such an activity can have that object or effect and accepts that possibility.*"³⁹. In this regard, scholars have aptly observed that "*While the prohibition on circumvention applies to anyone subject to EU law, its implementation necessitates actions beyond the EU*"⁴⁰, such that "*the due diligence may require that the counterparty accepts to comply with EU sanctions*"⁴¹.

In this perspective, a significant evolution is represented by Regulation 2025/2033 which amends Regulation 833/2014⁴². Recital (4) of Regulation 2025/2033 provides for the inclusion in the sanctions lists⁴³ of "*certain entities in third countries other than Russia that indirectly contribute to Russia's military and technological enhancement thereby enabling the circumvention of export restrictions[...]*". On the normative level, this is immediately reflected in the amendment to Article 5ad of Regulation 833/2014, which extends the prohibition on conducting, directly or indirectly, transactions with a legal person, entity or body established outside the EU that undermine the objective of the prohibitions laid down by that Regulation⁴⁴.

³⁹ Mohsen Afrasiabi, Behzad Sahabi and Heinz Ulrich Kessel (C-72/11) EU:C:2011:874 at [67].

⁴⁰ Bismuth and Dunin-Wasowic, "Towards a New Extraterritoriality of EU Sanctions?" in Zilioli, Bismuth and Thévenoz (eds), *International Sanctions: Monetary and Financial Law Perspectives*, p.142.

⁴¹ Ibidem.

⁴² Council Regulation (EU) 2025/2033 of 23 October 2025 amending Regulation (EU) No 833/2014 [2025], <https://eur-lex.europa.eu/eli/reg/2025/2033/oj>.

⁴³ Annex IV to Council Decision 2014/512/CFSP, <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32014D0512>.

⁴⁴ Council Regulation (EU) No 833/2014, art.5ad, as amended by Council Regulation (EU) 2025/2033.

In this regard, it is worth highlighting that Regulation 2025/2033 aims to counter the proliferation of entities specifically created to circumvent sanctions, introducing, *inter alia*, the notion of “mirror or successor entities”⁴⁵. These are defined through a case-by-case approach upon the occurrence of at least two of the following criteria: *i*) operational identity (e.g. substantially identical content, feeds or transaction flows); *ii*) visual identity (e.g. continuity of branding, design or user interface); *iii*) overlapping ownership, control or management; *iv*) redirection or migration of users from a listed entity; *v*) continuity of technical infrastructure, including use of the same code base, domains or applications. Such entities, whose sole economic *rationale* is the continuation of a sanctioned activity, have been introduced with a view to countering sanctions circumvention, thereby legitimising the expansion of the EU jurisdiction: the latter seeks to target economic continuity concealed behind legal discontinuity, thus fulfilling the requirements of artificiality and absence of autonomous economic substance as demanded by the theory of the evolved territorial extension.

A similar anti-circumvention logic emerges in relation to crypto-assets covered by Regulation 2025/2033: Recital (19) and (20) highlight the significant risk that they may be used to evade restrictive measures in the financial sector, to which Article 5ad lett. a) responds by extending the prohibitions to credit institutions, financial institutions and crypto-asset service providers that significantly undermine the objective of the prohibitions laid down by the sanctions regulations. In conclusion, according to the outlined observations, the regulatory framework of Regulation 2025/2033 appears to confirm the thesis identifying anti-evasion clauses as novel triggers capable of grounding the application of EU sanctions law beyond its own borders⁴⁶.

⁴⁵ Council Regulation (EU) No 833/2014, art.5ad(c), as amended by Council Regulation (EU) 2025/2033.

⁴⁶ A.S. Nagel, “Unilateral Extraterritorial Sanctions: The Search for a Jurisdictional Justification under International Law” (2023) 8 LSE Law Review 368.

As regards the counterparty principle, in the specific context of restrictive measures, it implies that the EU projects the jurisdiction it holds over its own economic operators onto their non-European counterparts, thereby indirectly regulating the conduct of entities formally not subject to the European legal order. This means that the extension of jurisdiction occurs on the basis of a relational criterion, consisting in the existence of a contractual relationship with a European operator, which represents a qualified connection with the EU's legal order.

Meaningful evidence of the counterparty principle can be found both in the prior sanction practice and Regulation 2025/2033. In this regard, the so-called “No Re-export Russia Clause” emerges as the most immediate example, having been introduced as of the twelfth sanctions package against Russia⁴⁷: it is significant in that it imposes on European exporters the obligation to contractually prohibit their counterparts from re-exporting certain goods to Russia, thereby projecting the EU's sanctions law onto entities formally not bound by it⁴⁸. However, a more recent instance is provided by Regulation 2025/2033 in relation to the amendments made to Article 5ac of Regulation 833/2014. In particular, it is provided not only for a prohibition on European operators from connecting to financial messaging systems of the Central Bank of Russia (hereinafter: SPSF system), but also for an extension of that prohibition to any transaction with legal persons or entities established outside Russia that make use of the SPSF system⁴⁹. In light of these observations, the counterparty principle operates in the sense that the direct legal obligation falls on the European operator; however, the regulatory effect extends to non-European counterparts, which will face the choice between accessing the Russian financial system or maintaining its relations with the EU counterparty. Consequently, this practice may

⁴⁷ Council Regulation (EU) 2023/2878 of 18 December 2023 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine [2023], <https://eur-lex.europa.eu/eli/reg/2023/2878/oj>.

⁴⁸ With regard to the so-called “No re-export to Russia Clause”, see European Commission, *FAQs on Sanctions against Russia and Belarus: The No Re-export to Russia Clause* ([finance.ec.europa.eu](https://finance.ec.europa.eu/publications/no-re-export-russia-clause_en)) https://finance.ec.europa.eu/publications/no-re-export-russia-clause_en.

⁴⁹ Council Regulation (EU) No 833/2014, art. 5 ac (a), paras 1 and 2, as amended by Council Regulation (EU) 2025/2033.

induce either a conforming behaviour of the non-European economic operator with the EU's sanctions regimes, or an evasive one, through the creation and utilisation of alternative trade and financial routes and flows: in this scenario, Regulation 2025/2033 explicitly acknowledges that the new designations of entities in third States, such as China or Turkey, are motivated by the fact that they facilitate the re-export of sanctioned goods, as already noted in Recital (4) thereof. In conclusion, the counterparty principle enables the EU to project the effectiveness of its sanctions regimes beyond its borders through the legal relationships existing between its own economic operators and those of third States, thereby asserting jurisdiction on the basis of the evolved theory of territorial extension.

The analysis of Regulation 2025/2033 confirms that the EU's sanctions regimes display novel triggers capable of bringing within European jurisdiction the conduct of operators formally not bound by the European legal order: it is therefore argued that the evolved theory of territorial extension finds application in these dynamics. However, this assertion raises the fundamental question of the legality of such jurisdictional extension in light of international law. In this regard, the answer is to be found in the safeguard mechanisms embedded in the sanctions regimes themselves, known as safety valves. In particular, these are mechanisms that prevent jurisdiction from expanding in an uncontrolled manner, operating as expressions of the principle of proportionality in cases where there emerge legal instruments giving rise to cross-border obligations⁵⁰. The fundamental forms of safety valves are identified with contingency and contextuality. By way of preliminary observation, it may be generalised that whereas contingency incorporates the provisional and conditional character of the application of EU law, the contextuality instead indicates that its application depends on a case-by-case assessment of the concrete circumstances of the situation considered⁵¹. In the context of restrictive measure,

⁵⁰ As discussed above, "The Evolution of the Theory of Territorial Extension".

⁵¹ Scott, "The New EU Extraterritoriality" (2014) 51 *Common Market Law Review* 1343, 1364–1370.

therefore, these elements assume a crucial role, operating as a safeguard of the legitimacy of EU external action.

As regards contingency, it may be argued that it is structurally inherent in restrictive measures, by virtue of their very characterisation as instruments of political and economic pressure, designed to promote a change in the conduct of third States, natural or legal persons, groups or non-state entities, in response to serious violations of the EU's fundamental values and interests as well as of international law⁵². It follows that restrictive measures are contingent by definition: their application persists as long as there occurs a violation of the protected objectives: in other words, the reversibility of the measure entails that the extension of jurisdiction through restrictive measures is of a provisional nature, ceasing upon the restoration of the violated legality.

As regards contextuality, this mechanism appears to operate most significantly in the context of anti-evasion clauses. An illustration of this can be found in the amendment to Article 5ad of Regulation 833/2014 made by Regulation 2025/2033, where reference is made to mirror or successor entities. In particular, a case-by-case assessment is required in order to verify the occurrence of at least two of the criteria prescribed by the provision for the constitution of the relevant legal situation. In this way, jurisdiction is not extended on the basis of a formal automatism, but by virtue of a contextual assessment establishing that the entity under consideration constitutes a mere continuation of the sanctioned entity.

In conclusion, it may be argued that the integration of safety valves into the EU's sanctions regimes ensures compliance with the principle of proportionality, which represents a necessary condition of legitimacy of restrictive measures. In this way, the EU's external action

⁵² See art. 21 TEU; Council of the European Union, *Guidelines on Implementation and Evaluation of Restrictive Measures (Sanctions) in the Framework of the EU Common Foreign and Security Policy* (4 May 2018), <https://data.consilium.europa.eu/doc/document/ST-5664-2018-INIT/en/pdf>; Beaucillon, *Les mesures restrictives de l'Union européenne*, pp.3–4 and 27.

in the sanctions domain, while expanding in scope, remains anchored to the fundamental value of the rule of law.

Conclusions

This article has examined the ways in which the EU extends its jurisdiction beyond the boundaries of its legal order through its sanctions regimes, assessing whether this phenomenon can be adequately framed within the theory of territorial extension.

The analysis has demonstrated that the EU's sanctions law is not confined to the application of traditional jurisdictional criteria, such as the principle of territoriality or active personality, but also incorporates more sophisticated triggers that activate European jurisdiction in relation to conduct of economic operators formally not bound by EU's legal order. In particular, anti-evasion clauses and the counterparty principle represent triggers of a more complex nature, functional and relational respectively: through these instruments, the EU becomes capable of extending its jurisdiction even in the absence of a direct territorial *nexus* with the EU's legal order. In this regard, the analysis of Regulation 2025/2033 has confirmed that these instruments find concrete application in the most recent sanctions practice, reflecting an ever-expanding reach of EU law.

On these bases, it is argued that the phenomenon under examination is correctly framed within the evolved theory of territorial extension, which is structurally distinct from pure extraterritoriality: whereas the latter operates in the absence of any connection with the regulating legal order, evolved territorial extension nonetheless maintains a connection with the same legal order, albeit a non-traditional one. This distinction is evidently relevant as it bears directly on the legitimacy of the EU's external action. In this regard, a clear tension thus emerges: while the EU maintains an opposite approach towards pure extraterritoriality, it has

simultaneously developed complex legal instruments that enable the projection of its rules beyond the boundaries of its legal order, in at least formal compliance with international law.

From this perspective, the safety valves embedded in sanctions regimes do not constitute a mere technical corrective, but a condition of legitimacy of the EU's external action. As already noted, contingency and contextuality are, in fact, expressions of the principle of proportionality, ensuring that the extension of jurisdiction does not occur in an uncontrolled manner and that the unilateral application of EU law is avoided. In this sense, the EU's external action in the context of restrictive measures remains anchored to the fundamental value represented by the rule of law yet expanding.

Nevertheless, these observations are not sufficient to resolve certain questions that require further investigation. In particular, a first open question concerns the compatibility of evolved territorial extension with international law on jurisdiction: while functional and relational triggers appear sufficient to exclude instances of pure extraterritoriality, their legitimacy in light of general principles of law has yet to be consolidated in practice and in case law. Furthermore, an empirical question arises as to the effectiveness of safety valves: it will be for practice and case law to determine whether these safeguard mechanisms are genuinely capable of preventing phenomena of *de facto* extraterritoriality, operating as effective proportionality checks. These are, in any event, central questions that suggest the debate on the effective scope of the EU's sanctions regimes is set to intensify.