Società Italiana di Diritto Internazionale e di
Diritto dell'Unione Europea

TESI DI DOTTORATO IN DISCIPLINE GIURIDICHE INTERNAZIONALISTICHE ED EUROPEE

INDIRIZZO E-MAIL: francesca.fnelli@uni.lu

NOME E COGNOME : Francesca Finelli

UNIVERSITÁ: University of Luxembourg - Università di Pisa

TUTOR DELLA TESI DI DOTTORATO: Prof. Matthew Happold (UniLu) - Prof.ssa Sara Poli (UniPi)

CICLO DI DOTTORATO E ANNO DI INIZIO: Marzo 2021 (UniLu) - XXXVII ciclo (a.a. 2021-2022) (UniPi)

TITOLO DELLA TESI: Countering Circumvention of Targeted Sanctions: A Comparative Analysis

ABSTRACT DELLA TESI:

Economic sanctions are an important foreign policy tool for addressing a wide range of international and national security threats, such as acts of aggression, proliferation of weapons of mass destruction, terrorism, human rights abuses. Today, economic sanctions are extremely sophisticated. They usually result in the imposition of targeted restrictions, which are a combination of sectoral restrictions and individual 'black-listings', also known as designations, which entail the imposition of travel ban and assets freeze measures against specific natural and legal persons.

Despite their popularity in international politics, targeted sanctions remain largely unregulated; there is no ad hoc legal framework, no "sanctions law", and no clear legal guidance on how restrictions should be designed in order to hit the right targets and minimize collateral damage to innocent bystanders. Moreover, there are not precise rules on how to respond to the phenomenon of circumvention.

In the absence of regulation on target selection and responses to evasion, there is a risk that targeted sanctions will escalate and become de facto comprehensive, affecting innocent bystanders and leading to serious humanitarian consequences. Ultimately, they can lead to non-targeted, indiscriminate, and arbitrary restrictions.

My research intends to address this problem and legal gap by providing innovative suggestions on how to design and enforce targeted sanctions in a way that is consistent with the rule of law and its core principles, such as legal certainty, necessity and proportionality.

My current research focus is on circumvention practices in relation to targeted restrictions against individuals, namely asset freeze measures against designated persons. These sanctions have a significant detrimental impact on targeted individuals, their fundamental rights and freedoms. Therefore, an effective response to sanctions evasion must take into account not only the foreign policy objectives at stake, but also the legal constraints imposed by the rule of law. Both the design and enforcement of targeted sanctions require new guiding principles, to avoid any arbitrariness. Indeed, an effective response to sanctions evasion cannot be unlimited, and must be guided by predictable legal principles. Otherwise, targeted sanctions risk losing their "smart' character and becoming aggressive and arbitrary tools of modern economic warfare.

My research employs a functional comparative analysis, examining three legal frameworks, namely the Grand-Duchy of Luxembourg (as EU country), the United Kingdom (as recently non-EU country) and the United States (as "champion" of sanctions design and enforcement). By considering the impact of sanctions on the rights of targeted individuals, I collect insights, best practices, and suggestions to ultimately define which strategy is the "best solution" for designing targeted sanctions and countering circumvention. I advocate for a balanced approach that reconciles foreign policy objectives with legal principles.

Specific attention is given to recent developments in the context of economic sanctions adopted after Russia's aggression of Ukraine. More precisely, I intend to examine how targeted sanctions have been imposed on facilitators of sanctions evasion (e.g., against family members, associates, and financial operators) who allegedly support Russian oligarchs and primary targets in circumvention schemes.