Non-paper on strengthening EU sanctions capacity and countering sanctions circumvention

2022 was characterized by the Russian war of aggression against Ukraine and the unity showcased by the international community in denouncing these gross violation of international law. The EU and its partners have adopted unprecedented sanctions packages aimed at limiting Russia's ability to wage war. The EU's sanctions capacity has been strengthened along the way, but further steps need to be taken, including in unified application among Member States. More substantial capacity for economic analysis is needed for advancing a data driven approach. The EU also needs to step up its capacity to develop listing proposals. However, it is essential to maintain and further increase the effectiveness of our existing sanctions. **The year 2023 must be the year of success in countering circumvention**.

As concluded by the European Council on 9 February 2023: "Anti-circumvention measures will be reinforced." This paper aims to contribute to operationalize this. Circumvention is detrimental not only to the effectiveness, but also to the societal support for our sanctions. Those that abide by our measures and carry their costs can question their legitimacy if others do not, and may ultimately be led to disregard them. Circumvention tactics and procurement efforts by the Russians are getting more numerous and more creative. With these efforts **Russia is trying to keep supplying its military industry** with the necessary components despite our sanctions.

We see that Russia is transitioning into a full-on military economy with a view to sustaining its war efforts. Alternative supply chains are created through the use of front companies and intermediates in the circle of countries around Russia. Special **focus should be put on Western components** that are crucial to the Russian military industry. These components are not easily replaced: changing an element in weapons production takes months, due to certification and design processes. A small disruption of these production chains therefore quickly has a significant impact in the Russian ability to produce weapons and military equipment.

It is therefore urgent that the EU and its partners counter sanctions circumvention together. We welcome existing initiatives, but wish to advance an innovative, coordinated and cooperative approach where we think outside the box. The following elements need to be taken on board in order to more successfully counter the circumvention of our sanctions:

1. Strengthen the feedback loop between enforcement practice at national level and sanctions policy at EU-level.

- At national and EU-level, cooperation between agencies like customs, tax authorities and prosecutors, the intelligence community, as well as research institutes and statistics agencies is crucial. MS should set the necessary steps to identify concrete cases of circumvention for enforcement purposes. This should also be a structural element of high level dialogue in the relevant fora.
- Bring this information up to the EU-level of sanctions policy making so loopholes can be closed.

2. Strengthen the EU point of contact for sanctions circumvention

- Exchange of information at the EU level is essential for common analysis. We should therefore ensure that national authorities can safely share information on possible circumvention in Brussels in an easily accessible way.
- Strengthen the EU's capacity for analysis and research. Provide – within the institutions - a platform for common analysis on individual cases of circumvention and possibly jurisdictions that facilitate circumvention to enable a common approach.
- Leverage the soon to be established EU Anti-Money Laundering Authority (AMLA, 500 FTE) for countering sanctions circumvention.

3. Identify concrete steps for diplomatic outreach and potential further measures

- Based on our common analysis, concrete steps can be identified in order to address the specific cases of (potential) circumvention.
- On a case-by-case basis, it can be determined what form of action is appropriate, starting with diplomatic outreach. This could be done by the Special Envoy for the Implementation of EU Sanctions, through EU démarches and/or a letter from the EU institutions.
- Seek coordination with G7-plus partners where possible, to coordinate such engagement with third states where possible/necessary.

4. Expand the EU-toolbox

- Need to be creative and look beyond the sanctions instrument. This could include:
    - Guidance by EU institutions for EU companies and tools to recognize and counter circumvention patterns.
    - Issuing official warnings to certain persons/entities inside and outside the EU;
    - Watch list of companies and/or sectors/trade flows of specific concern: explore possibilities of publishing 'suspicions' or warnings in case sufficiently solid evidence cannot be presented, enabling *due diligence* for companies;
    - Encourage companies in circumvention-sensitive sectors to adopt contractual obligations regarding end-use;
    - Use of the EU's trade toolbox and possibly other instruments of external action can be considered in cases of widespread circumvention within the territory of a specific state that refuses to act upon these issues. The possible use of EU´s trade instruments in this context should be examined further in order to secure legal compliancy with the instruments.
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5. Expand *listing* capacities

- We should give a strong signal to persons and entities in third states. The provision of material support to Russia's military and defense industrial base will have severe consequences regarding their access to the EU market.
- Currently, listing of entities in third countries can only be done by (1) using the general criterium of providing material support for the invasion, or (2) by using the new criterion, which requires proving a link with an infringement of the prohibition of circumvention by EU actors. This puts the bar for application very high in practice. It requires a preceding investigation by an enforcement agency and possibly a public outcome. We should use these possibilities to the maximum extent, but more is needed.
- The EU needs to be able to act also on other cases where circumvention may be linked directly or indirectly to the use of products/components on the battlefield in Ukraine, thereby including a broader category of products/components required for weapons and military production.

The EU and its partners need to do everything in their power to limit the ability of Russia to wage its war of aggression. Tough enforcement of sanctions offers the EU a possibility to **increase pressure and acts as a deterrent**. Imposing sanctions should not be seen as the end of a policy process, but rather the beginning.