



IECLO



UNIVERSITÀ DEGLI STUDI  
DI SALERNO



Co-funded by  
the European Union

# When Criminal Justice Meets Restrictive Measures

## Freezing and Confiscation Orders as Primary Tools Against Transnational Sanctions' Violations

**Lorenzo Bernardini**

Postdoctoral Researcher in Criminal  
Law and Criminal Procedure

University of Luxembourg

Project funded by European Commission Erasmus + Programme – Jean Monnet  
Action Project No. 101126599.

Funded by the European Union. Views and opinions expressed are however those  
of the author(s) only and do not necessarily reflect those of the European Union or  
the European Education and Culture Executive Agency (EACEA). Neither the  
European Union nor EACEA can be held responsible for them.

**EU  
GLOBACT**  
TRANSNATIONAL CRIME AND EU LAW:  
towards Global Action against Cross-border Threats to  
common security, rule of law, and human rights



International & European  
Criminal Law Observatory



UNIVERSITÀ DEGLI STUDI  
DI SALERNO



Co-funded by  
the European Union

# 1. Setting the scene (I)

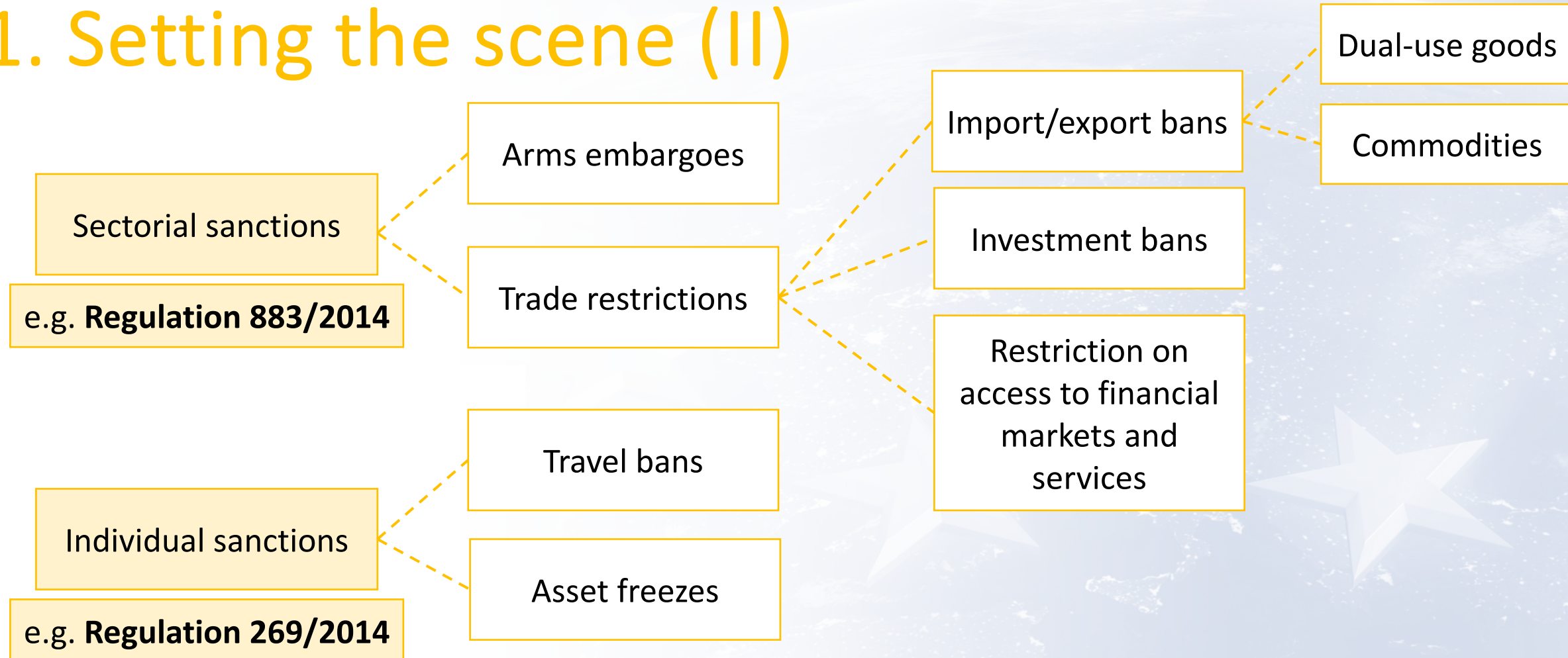
A broad term - **'restrictive measures'** or **'economic sanctions'**

- A set of **non-military sanctions** imposed by countries or international organizations against **states, entities, or individuals**
- **Tools** to achieve **foreign policy and security objectives**.
- **Unilateral** (imposed by one country) or **multilateral** (imposed by multiple countries or an international body like the UN or the EU).
- Depending on the **impact**:
  - **Sectorial**
  - **Individual**





# 1. Setting the scene (II)





International & European  
Criminal Law Observatory



UNIVERSITÀ DEGLI STUDI  
DI SALERNO

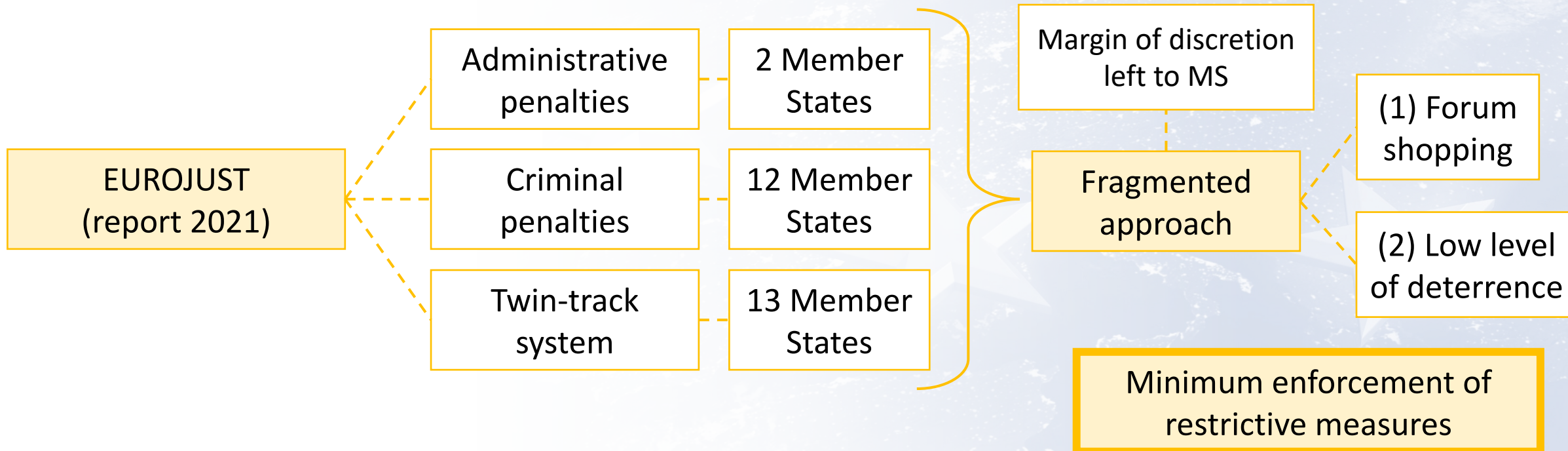


Co-funded by  
the European Union

## 2. Enforcing EU restrictive measures

The EU can **autonomously** lay down restrictive measures (e.g., those against Russia)

But how to tackle on the **violation** of restrictive measures?





International & European  
Criminal Law Observatory



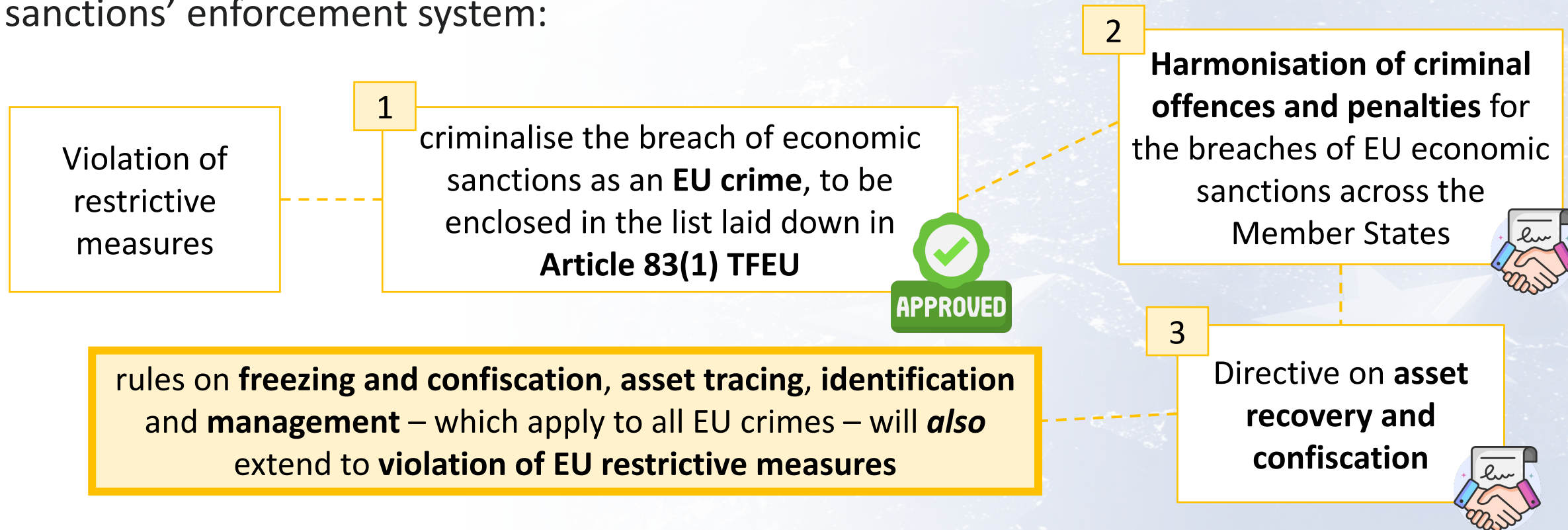
UNIVERSITÀ DEGLI STUDI  
DI SALERNO



Co-funded by  
the European Union

## 3. The EU response

Unprecedented '**three-step initiative**' to address the 'ineffectiveness' of the whole sanctions' enforcement system:







International & European  
Criminal Law Observatory



UNIVERSITÀ DEGLI STUDI  
DI SALERNO



Co-funded by  
the European Union

## 4. The main issue at stake

First-ever **expansion of the catalogue** laid down in Article 83(1) TFEU

applying criminal law in specific context entails **adherence to several principles**

whether the *enforcement* of EU restrictive measures can ***solely* be achieved through criminal law tools**

whether criminal law was indeed **the *sole and appropriate*** (i.e., effective) **instrument for addressing violations of restrictive measures**, as opposed to alternative legal avenues, such as administrative law

whether the whole criminalisation process can be **justified as *necessary*** and **in accordance with the principle of last resort**



## 5. A critical analysis (I)

The violation of EU restrictive measures should be qualified as an area of crime *'in order to ensure the effective implementation of the EU policy on restrictive measures'*

Is criminal law the most suitable **effectiveness-enhancing choice** for **non-criminal systems** characterized by suboptimal enforcement?

Substantive issues

Procedural issues

What is effectiveness?

Legal interest

'Precarious' nature  
of restrictive  
measures

Employment of freezing and  
confiscation orders



# 5. A critical analysis (II)



Freezing orders

*Interim measures*

Public prosecutor

Investigative judge

Court

Fair trial rights

Article 6 ECHR  
Articles 47/48 Charter

Costs of maintenance

Defence rights

Employment of freezing and confiscation orders

Confiscation orders

*Definitive measures*

Conviction-based

Burden of proof

Timing



Non-conviction based

Exceptional cases

Unexplained wealth





International & European  
Criminal Law Observatory



UNIVERSITÀ DEGLI STUDI  
DI SALERNO



Co-funded by  
the European Union

## 6. Concluding remarks

- **Shift** from using various legal tools for enforcing restrictive measures to **relying exclusively on criminal law**, criminalizing their direct violation and circumvention.
- Belief that criminal law could enhance the overall effectiveness of the sanctions' regime, which currently experiences a **marked lack of enforcement**.
- By equipping Member States with the legal means to freeze and confiscate assets linked to the aforementioned criminal offenses, the EU aimed to **strengthen the biting effect** of economic sanctions

“What is the contribution of criminal penalties to the effectiveness of a law? Criminological debate continues as to which way and in which matters criminal penalties represent the best means of ensuring the effective enforcement of the law. **It may be too simple to assume that criminal law is *always* the appropriate remedy for a lack of effectiveness**”