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1

Introduction: Sanctions in the EU Legal Order

JACOB ÖBERG, ESTER HERLIN-KARNELL AND MARIA BERGSTRÖM

1.1 THE LEGAL AND POLITICAL CONTEXT OF EU SANCTIONS

Sanctions in eu law constitute a cross-cutting area that shapes and influences distinctive EU law policies and disciplines. While the imposition of sanctions is essentially about the effective enforcement of EU law, the question of sanctions has become in principle a self-standing legal area, particularly in the field of EU external relations law. Sanctions is traditionally divided between the 'external' dimension of the use of EU sanctions[1] and the EU internal dimension, which addresses the increasing use of administrative and criminal law sanctions for enforcing EU law against individuals and sanctions against EU Member States.[2] EU sanctions is clearly an important, dynamic and politically contested field of EU law and policy deserving serious scrutiny both in the literature on European studies and by EU policy-makers.

This book emerges from the intellectual discussions sparked by the conference 'in EU Law and Policy' held in Lund on 16–17 May 2024 at the Faculty of Law, kindly sponsored by the Swedish Network for European Legal Studies. Those conversations were focused, much like this volume, on the distinctive and specific meanings of sanctions within the EU legal order, both as a vehicle to conduct foreign policy and as a tool to promote and realise internal EU policies. The contributions to this volume have a very broad scope ranging from issues of EU external relations law to EU constitutional law, fundamental rights, EU criminal law, EU sanctions politics and EU financial law. Having said that there are at least three common themes emerging from this collection of chapters.

[1] Francesco Giumelli, Fabian Hoffmann and Anna Książczaková, 'The when, what, where and why of European Union sanctions' (2021) 30 *European Security* 1.

[2] Paulina Pospieszna, Michal Onderco and Reinout van der Veer, 'Comparing public attitudes towards internal and external EU sanctions: the role of populism, trust and Euroscepticism' (2024) 40 *East European Politics* 345; Adrienne Moor-van Vugt, 'Administrative sanctions in EU law' (2012) 5 *Review of European Administrative Law* 5.

First, many contributions in this volume touch upon the 'instrumental' use of sanctions. This theme seem to coincide with the ruling of the Court of Justice of the European Union (CJEU) in the seminal case *Greek Maize* where the Court proposed that sanctions to enforce EU rules must be 'effective, proportionate and dissuasive'.[3] On a theoretical note, sanctions are undoubtedly viewed in literature as secondary rules necessary to give force to more substantive rules and policies.[4] Whether sanctions are imposed in the external context or in the internal context (for sanctioning Member States) or for sanctioning individuals and firms breaching substantive EU rules, the overriding objective of sanctions is to ensure compliance with substantive EU policies. [5] In this way, the book considers EU sanctions – both in the internal and external sphere – as an essential vehicle to further the objectives and policies of the EU legislator.[6] Both external and internal sanctions have the same goals: they aim to (i) signal norm violations, and (ii) coerce and (iii) constrain a target into changing its behaviour.[7] It is an utilitarian vision of law designed, through the application of sanctions and costs for individuals, to reduce harmful activities or promote particular behaviour in order to secure other goals or benefits.[8]

A closely related theme to this is the effectiveness of EU sanctions. The effective employment of EU criminal[9] and administrative sanctions in EU policy fields such as migration law,[10] financial market law[11] and competition law[12] has been the long-standing object of both scholars of EU law and political science with a rich literature, focusing in particular on deterrence, and many contributions

[3] Case 68/88 *Commission v Greece* EU:C: 1989:339, para 24.

[4] Leo Kanowitz, 'The Place of Sanctions in Professor H.L.A. Hart's Concept of Law' (1966) 5 *Duquesne Law Review* 1; Eric Colvin, 'The Sociology of Secondary Rules' (1978) 28 *The University of Toronto Law Journal* 195; Anthony Kronman, 'Hart, Austin, and the Concept of a Legal System: The Primacy of Sanctions' (1974–75) 84 *Yale Law Journal* 581.

[5] See Jacob Öberg, *Limits to EU Powers; A Case Study of EU Regulatory Criminal Law* (Hart Publishing, 2017) ch 4 for the employment of criminal sanctions for enforcing EU policies; Madeleine de Cock Buning and Linda Senden, 'Introduction: EU Private Regulation and Enforcement – Mapping its Contextual, Conceptual, Constitutional and Citizens ' Dimensions' in Madeleine De Cock Buning and Linda Senden (eds), *Private Regulation and Enforcement in the EU: Finding the Right Balance from a Citizen's Perspective* (Hart Publishing, 2020).

[6] See Arts 83(2) and 215 TFEU, Art 29 TEU.

[7] Daniel S Nagin, 'Deterrence in the Twenty-First Century' (2013) 42 *Crime and Justice* 199; Roger Bowles, Michael G Faure and Nuno Garoupa, 'The Scope of Criminal Law and Criminal Sanctions: An Economic View and Policy Implications' (2008) 35 *Journal of Law and Society* 389; Heli Korkka-Knuts, Eelis Paukku and Jaako Markus, 'Reassessing Deterrence: The Effectiveness of Administrative Sanctions across three EU Regulatory Frameworks' (2025) 50 *European Law Review* 436.

[8] See Stephen Coutts, 'Supranational Public Wrongs: The Limitations and Possibilities of European Criminal Law and a European Community' (2017) 54 *Common Market Law Review* 771; Michael Moore, *Placing Blame: A Theory of Criminal Law* (Oxford University Press, 1997) 161–63.

[9] See Lorenzo Grossio, Stefano Montaldo and Valsamis Mitsilegas, *Proportionality of Criminal Penalties in EU Law* (Hart Publishing, 2025).

[10] Employers Sanctions Directive 2009/52/EC [2009] OJ L168/24 and Xanthopolou's chapter in this volume.

[11] Korkka-Knuts, Paukku and Markus (n 7) with further references to relevant literature.

[12] ibid with further references to relevant literature.

in this volume touch upon this perennial issue.[13] One contribution also considers central issues such as the overarching rationales for sanctions and how they should be designed to achieve effectively EU policies.[14] A further central issue for EU sanctions is to what extent the current decision-making framework is designed to make it possible for the EU to act swiftly and decisively when imposing sanctions and restrictive measures.[15]

The second major theme of the book is the politics and policy of EU sanctions. It is apparent that sanctions take a centre stage in the EU legal order, particularly within the current volatile geopolitical situation.[16] Sanctions in the external context are employed primarily to promote the EU's values outside its borders, including promoting democracy, to pressure other states to democratise, or to protect the rule of law or respect human rights.[17] External sanctions are punitive measures imposed by EU executive actors on non-Member States, which usually entail restrictions on the targets' economic and political linkages to the EU and its Member States. Within the Common Foreign and Security Policy (CFSP), the EU has imposed financial sanctions, freezing of assets, investment bans, flight bans, or embargoes on arms or other specific goods in non-member countries. Today, the EU is the only regional organisation that uses sanctions exclusively beyond its membership and against third countries.

Notable recent cases in point of EU external sanctions are those imposed on autocratic regimes, such as Belarus and Russia[18] many years before the Russian aggression against Ukraine beginning in 2014. Although CFSP objectives stress the need to 'preserve peace, prevent conflicts and strengthen international security', these concerns are only mentioned later, thus implying that rule of law concerns should be prioritised by the EU.[19] The Russian invasion of Ukraine

[13] See contributions by Damkjaer Christensen, Reinse and Van Bockel, and Finelli and Öberg in this volume. See more generally Vanessa Franssen and Chris Harding (eds), *Criminal and Quasi-criminal Enforcement Mechanisms in Europe: Origins, Concepts, Future* (Hart Publishing, 2022). Clara Portela, *European Union Sanctions and Foreign Policy: When and Why Do They Work?* (Routledge, 2012).

[14] ibid.

[15] See contributions by eg Södersten, Moiseienko, Van Elsuwege and Challet in this volume.

[16] Cardwell's contribution in this volume examines in depth the role of EU sanctions in EU foreign policy.

[17] Richard Youngs, 'Democracy Promotion as External Governance?' (2009) 16 *Journal of European Public Policy* 895; Francesco Giumelli, *Coercing, Constraining and Signalling: Explaining UN and EU Sanctions After the Cold War* (ECPR Press, 2011); Francesco Giumelli, 'How EU Sanctions Work: A New Narrative'(EU ISS Chaillot Paper No 129, 2013); Paulina Pospieszna and Clara Portela, 'Understanding EU Sanctioning Behavior' (2020) 1 *Przeglad Zachodni* 55; Clara Portela, 'The EU Human Rights Sanctions Regime: Unfinished Business.' (2021) 54 *Revista General De Derecho Europeo* 19; Elin Hellquist and Stefano Palestini, 'Regional Sanctions and the Struggle for Democracy: Introduction to the Special Issue' (2020) 42 *International Political Science Review* 437.

[18] Clara Portela, Paulina Pospieszna, Joanna Skrzypczyńska and Dawid Walentek, 'Consensus Against All Odds: Explaining the Persistence of EU Sanctions on Russia' (2021) 43 *Journal of European Integration* 683; Paul J Cardwell and Erica Moret, 'The EU, Sanctions and Regional Leadership' (2023) 32 *European Security* 1.

[19] Art 21(2) TEU.

highlights the fundamental societal implications of this contribution as EU sanctions have been used – as one of the primary foreign policy tools by the Union to intervene in the conflict.[20] Council Regulations adopted pursuant to Article 215 Treaty on the Functioning of the European Union (TFEU)[21] have put in place a series of Union restrictive measures against Russian and Belarusian individuals and companies, some of which date back to 2014.[22]

Nonetheless sanctions are also used as a policy tool employed by the EU to impose its values on their members.[23] The EU has powers to condemn individual Member States breaching the EU Treaties that usually can entail sanctions[24] or in more grave cases entail restrictions on the benefits of EU membership (such as cuts in funding or barring of voting rights).[25] Additionally, the EU can also theoretically use political conditionality[26] as a part of the accession process; such tools were considered as the most effective instruments in the EU's toolkit to promote Central and Eastern European (CEE) states that joined the EU in 2004 and 2007.[27] Yet, in recent years, democracy and rule of law were seriously curtailed in some CEE countries[28] and the EU has responded by introducing new internal sanctioning mechanisms in these areas, such as a rule of law conditionality mechanism[29] in the EU budget to complement the existing Article 7 procedure.[30]

[20] Moiseienko, and Kaunert and Deus Pereira examine this closely in their contributions to this volume.

[21] Art 215 TFEU enables the Council to adopt restrictive measures against natural or legal persons and groups, or non-state entities, or to adopt measures providing for the interruption or reduction, in part or completely, of economic and financial relations with one or more third countries, on the basis of a decision pursuant to Art 29 TEU.

[22] They include targeted individual measures (ie, asset freezes and restrictions on admissions (travel bans)), sectoral measures (ie arms embargoes), and economic/financial measures (eg import and export restrictions, restrictions on the provision of certain services, such as banking services). See for an overview, Council of the European Union, 'EU sanctions against Russia' explainer, www.consilium.europa.eu/en/policies/sanctions-against-russia.

[23] See also Södersten's chapter in this volume.

[24] See Arts 258–60 TFEU.

[25] See Art 7 TEU.

[26] Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget.

[27] Jon CW Pevehouse, 'Democracy with a Little Help from My Friends? Regional Organizations and the Consolidation of Democracy the Euphoria Third Wave of Democratization Began to Survival' (2002) 46 *American Journal of Political Science* 611; Frank Schimmelfennig and Ulrich Sedelmeier, *The Politics of European Union Enlargement: Theoretical Approaches*. (Routledge, 2005); Milada Anna Vachudova. 'Ethnopopulism and democratic backsliding in Central Europe' (2020) 36 *East European Politics* 318.

[28] Sophie Meunier and Milada Anna Vachudova, 'Liberal Intergovernmentalism, Illiberalism and the Potential Superpower of the European Union' (2018) 56 *Journal of Common Market Studies* 1631.

[29] Judgments in Cases C-156/21 *Hungary v Parliament and Council* EU:C:2022:97 and C-157/21 *Poland v Parliament and Council* EU:C:2022:98.

[30] Antonia Baraggia and Matteo Bonellli, 'Linking Money to Values: The New Rule of Law Conditionality Regulation and Its Constitutional Challenges' (2022) 23 *German Law Journal* 131; Michael Blauberger and Vera van Hüllen, 'Conditionality of EU Funds: an Instrument to Enforce EU Fundamental Values?' (2021) 43 *Journal of European Integration* 1.

The final important theme of sanctions is its relationship to fundamental rights and human rights and proportionality. Sanctions (and notably criminal sanctions) have significant and far-reaching implications for individuals subjected to sanctions.[31] In this manner the imposition of sanctions at EU level is a testament to the most intrusive exercise of public power by the EU legislator. This brings into play a number of questions of legitimacy, effectiveness and the overall policy rationale of sanctions.[32] The book seeks to also examine these issues critically and in-depth probing the extent to which sanctions is a normatively justified exercise of public power. The issues at stake have recently received particular prominence due to the inclusion of the European Charter of Fundamental Rights as key policy instrument guiding but also constraining the pursuit of EU sanctions policies. Recent substantial legislative and political developments in the field together with a stronger enforcement and fundamental rights dimension triggered by the Charter of Fundamental Rights, however, justifies taking a renewed perspective on EU sanctions. This is equally clear in the area of EU criminal law and EU migration law where recent case law on proportionality, sanctions and procedural safeguards highlights the increasingly complex and contested nature of sanctions as a tool for implementing EU policies.[33]

In light of all this, this book brings together leading scholars in EU law, international relations, trade policy and administrative law to reflect conjointly on this dynamic and changing area of EU law and politics. The book is also a testament to the cross-cutting and interdisciplinary notion of EU sanctions. It is impossible to obtain proper insights into the functioning of EU sanctions by looking at it from one single discipline or area of EU law and policy. The individual chapters to this volume seek to offer a collective significant contribution to this emerging field of EU law and policy, by offering both internal and external perspectives on EU sanctions and aiming to offer the first multidisciplinary examination of sanctions with perspectives ranging from EU law, international trade law, international relations, criminal law, migration law and political science. We envisage that political scientists can make sense of and provide insights into the political context and the driving forces of the pre- and post-Lisbon development of EU sanctions. Lawyers, in their turn, examine the extent to which lessons from political science may be employed to analyse and evaluate the effectiveness of and justifications for EU sanctions. We thus contend that a more contextualised view of the legal developments is indispensable for

[31] See Jacob Öberg, 'The Definition of Criminal Sanctions in the EU' (2013) 3 *European Criminal Law* Review 273.

[32] See eg Xanthopoulou's contribution to this volume.

[33] See chapters by Grossio, Finelli and Öberg in this volume.

an enhanced understanding of the institutional, legal and political dynamics of EU sanctions as a key element of European integration.[34]

1.2 OVERVIEW OF THE BOOK

Part one of the book examines some general issues on EU sanctions and the framework in which such sanctions are adopted.

Anna Södersten first evaluates the intersection of restrictive measures and rule of law sanctions within the EU, focusing on the implications of unanimity and potential treaty revisions. Her chapter begins by comparing these mechanisms, highlighting their shared objectives of promoting EU values but differing targets and content. She then discusses the procedures for treaty revisions, emphasising calls for amendments to allow qualified majority voting for both Article 7 sanctions and restrictive measures. Various alternatives for decision-making, such as abstentions, *passerelles*, and enhanced cooperation are examined, noting their applicability and limitations. The analysis concludes that while treaty revision appears necessary for effective enforcement of Article 7 sanctions, alternatives may enhance flexibility for restrictive measures.

Ester Herlin Karnell then explores the idea of a sanction in EU criminal law as a truly cross-policy phenomenon in EU law. The chapter first observes that EU sanctions play an important role in the EU's security strategies and external relations. The EU has currently adopted 19 packages of sanctions against Russia in response to the full-scale invasion of Ukraine in February 2022. While sanctions are not new in the history of the EU, the sanctions against Russia are unprecedented in their scale, due to the Russian war in Ukraine and the current security threat to Europe. This chapter examines the EU sanctions regime and its various aspects, with particular focus on the internal and external dimensions of the EU's sanctions policy. More specifically, the chapter focuses on the broader relationship between EU criminal law and security, as well as on the role of human rights justifications in sanction adoption. Additionally, the chapter emphasises the market-based rationale regarding human rights justifications for legislation.

Part two of the book focuses specifically on the external dimension of EU sanctions.

Paul James Cardwell examines the role of sanctions in the EU external relations probing on the maturity of EU Foreign policy. The Common Foreign and Security Policy (CFSP) has, since its difficult birth in the Treaty of Maastricht,

[34] Paul J Cardwell and Tamara Hervey, 'The Roles of Law in a New Intergovernmentalist European Union' in Chris J Bickerton, Dermot Hodson and Uwe Puetter (eds), *The New Intergovernmentalism: States and Supranational Actors in the Post-Maastricht Era* (Oxford University Press, 2015) 74; Christian Joerges, 'Taking the Law Seriously: On Political Science and the Role of Law in the Process of European Integration' (1996) 2 *European Law Journal* 105.

been dogged by accusations of lack of coherence, identity and – crucially – effectiveness. These criticisms were well founded, given that the EU's response to the break-up of Yugoslavia and the genocide in Rwanda in the 1990s fell far short of the ambitions for foreign policy coordination as laid down in the Treaty. Since Maastricht, there have been numerous attempts to forge an institutional path forward between making the EU both visible and effective in foreign policy and respecting the hesitancy for further integration of some of the Member States in this core area of state sovereignty. The ability of the EU to impose sanctions on third countries and individuals has, however, come to the fore in the past two decades. Sanctions have become a 'go-to' mechanism which, for the EU, has the dual advantage of being both a foreign policy instrument and reliant on the EU's status as a trade powerhouse. This chapter places sanctions in the context of the struggle for the EU to put in place a meaningful foreign policy. It argues that the legalisation of the CFSP has allowed the EU and its Member States to forge a path which allows for agreement and consensus whilst respecting differences. This is predicated, however, on the Member States continuing to have broadly the same views on those states and individuals on whom sanctions have been placed, and highlights the risk that sanctions – whilst held up as an example of successful cooperation – could very easily turn to the opposite example.

Peter Van Elsuwege and Celia Challet subsequently consider the unprecedented nature of the EU's sanctions against Russia. The EU's sanctions against Russia are deemed to be 'unprecedented' in both scale and character, raising questions about their specific nature and long-term institutional implications for the adoption of sanctions within the EU legal order. How do the EU sanctions against Russia differ from previous EU sanctions regimes, and to what extent does this affect the EU's sanctions policy in practice? Various dimensions can be identified to answer this question. First of all, there is an evolution towards broad designation criteria for the adoption of individual sanctions in combination with a wide range of sectoral sanctions. This evolution raises critical questions relating to the EU's compliance with fundamental rights, the principle of proportionality, and its own sanctions competence. Second, the unprecedented focus on ensuring sanctions effectiveness has led to new anti-circumvention mechanisms, which are also subject to questions of competence and proportionality. Third, the sanctions against Russia have triggered significant institutional innovations, most notably a substantial expansion of the European Commission's role since the start of Russia's full-scale war against Ukraine. In parallel, the EU has increasingly adopted complementary measures outside the CFSP, pointing to a gradual supranationalisation of EU sanctions policy. The combination of all these elements implies that the EU's sanctions against Russia may be regarded as a 'game-changer' in the EU's sanctions practice with long-term legal and institutional consequences. Sanctions are no longer merely a foreign policy instrument but increasingly permeate the entire EU legal order.

Anton Moiseienko subsequently examines frozen Russian state assets and reparations for Ukraine. Following Russia's full-scale invasion of Ukraine in February 2022, G7 economies and other like-minded nations froze US$300 billion in Russian foreign currency reserves. Since then, debates have been taking place as to whether, and how, these funds can be used to enforce Russia's obligation to pay reparations to Ukraine. This chapter explains the principal legal, economic and policy points of contention in these discussions. It also traces their evolution across three phases: the crystallisation of key disagreements in 2022–23; the utilisation of interest generated by frozen Russian state assets from 2024 onwards; and the EU's consideration of the proposed reparations loan in 2025. While the situation continues to develop at a rapid pace, this chapter will help the reader understand the main legal, policy and practical complexities involved.

Christian Kaunert and Joana De Deus Pereira examine the politics of EU sanctions against Russia within the context of the war against Ukraine (2014 and 2022 onwards). In February 2022, Vladimir Putin announced the beginning of a full-scale invasion of Ukraine, taking place across land, sea, and air. The EU significantly expanded its sanctions against Russia in response to the military aggression. This chapter asks how EU sanctions have been embedded in, and contributed to, an ontological securitisation process in which Ukraine and Europe are constructed as threatened reference objects in EU–Russia relations where Putin provoked a sense of disruption and insecurity through acts, images, and narratives derived from the masterful management of cognitive and normative maps, both of the Self (Russia) and the Other (EU), and of Russia as being ontologically stronger than Europe. Contrary to what happened throughout the Cold War, Russia is not interested in spreading the communist message across the continent or pursuing military control of the whole of Europe; the objective is now to reshape the continent's liberal and security order.

Rachel Frid analyses in her turn EU economic sanctions within the context of international trade law. The increase in recent years in the application and the harmful effects of unilateral economic sanctions has caused an increase in challenges to their legality brought by states targeted by sanctions. The growing use of economic sanctions is characterised by imposing sanctions for non-trade policy goals and invoking the national security exception in defence of violations of the World Trade Organization (WTO) obligations. This calls for a thorough consideration from the perspective of international trade law. In the EU, trade sanctions for non-economic purposes have enjoyed increasing application as a tool of the EU foreign policy. Therefore, the WTO consistency of the trade sanctions imposed by the EU on the Russian Federation is examined as a case study. It is argued that even if the EU trade sanctions would seem to satisfy the relevant WTO legal requirements, this would nonetheless call for the questioning of the harmful effects of economic sanctions, their doubtful effectiveness and the impact of using sanctions to achieve political objectives on the rule of international trade law.

In the part three of the book, criminal sanctions are explored within the context of EU law and EU politics.

Francesca Finelli and Jacob Öberg explore the normative justifications for enforcing EU restrictive measures through criminal law. The Union has today been conferred with an explicit competence to harmonise criminal laws and sanctions in Article 83(1) TFEU to 'establish minimum rules concerning the definition of criminal offences and sanctions in the areas of *particularly serious crime* with a *cross-border dimension* resulting from *the nature or impact of such offences* or from a *special need* to combat them on a common basis' (emphasis added). The provision has a predetermined list of offences – the 'Eurocrimes' – said to be satisfying those conditions. There is nonetheless a procedure for adding new crimes to the list according to which the Council unanimously adopts a decision identifying a certain offence as another area of crime meeting those criteria. This procedure was for the first time employed in respect of the Council decision to extend the list of Eurocrimes to the violation of EU restrictive measures and subsequent adoption of a Directive harmonising the Member States' criminal laws in respect of those criminal offences. The chapter seeks to critically examines the legal and normative justification for criminalising breaches of EU sanctions. It first looks at the fast-track criminalisation process pursuant to Article 83(1) TFEU, and the negotiation history of Directive (EU) 2024/1226. Subsequently, it examines the rationale behind this criminalisation process and illustrates the extent to which the introduction of a new Eurocrime is in line with the legal preconditions for exercising the competence in Article 83(1) TFEU. Finally, the chapter has some broader reflections on the impact and potential for this Directive being transposed into national laws and the future development in this field including the potential extension of the remit of the European Public Prosecutor's Office to deal with such offences.

Lorenzo Grossio revisits the principle of proportionality in the harmonisation of Member States' substantive criminal law. More specifically, the chapter assesses the proportionality constraints to both EU criminalisation choices underpinning harmonised offences and the approximation of the type and level of corresponding sanctions. To that aim, the analysis first delves into the relevant legislative practice to disclose how the EU legislature weights conflicting interests when shaping harmonising provisions on offences and penalties. In this context, the relevant *travaux préparatoires* witness an uneasy intersection between the EU concept of proportionality – whose matrix consists of the threefold suitability, necessity and proportionality *stricto sensu* assessment – and the criminal law one. When assessing the proportionality of EU harmonised offences and penalties, the threefold test is enriched with two further schemes, involving an assessment of the severity of supranational penalisation vis-a-vis, respectively, the attainment of a genuine dissuasive effect (prospective proportionality) and the seriousness of the wrongdoing (retrospective proportionality). Secondly, the chapter frames the CJEU's approach to the proportionality review of those harmonising provisions. In this regard, the chapter discusses the extent

of the Court's scrutiny and the influence of prospective and retrospective proportionality, thus deepening the interaction between the EU and criminal law understandings of the principle in the context of supranational judicial review.

Francien Rense and Bas Van Bockel in their turn look at corporate criminal liability in the EU as a key concept for addressing when and how to attribute individuals' acts or omissions to corporations rather than considering actions of the legal entities on their own. They note first that standards for corporate liability in relation to criminal acts in the EU are divergent where some states do not recognise the concept whilst other states have developed nuanced and comprehensive criteria for establishing such liability. While explaining and referring to the flexible and neutral concept of corporate criminal liability under Dutch criminal law, the authors explain that such concept is playing out most effectively and fairly if: (i) it is able and tailored to identify and assess actions of the legal entities itself, not necessarily focussing on individuals' actions; and (ii) the concept is determining and establishing criminal liability of corporations. The paramount driver of proportionate, effective and dissuasive sanctioning when applied to legal entities, calls for consideration of the prevailing concept of corporate liability *ex crimine* under EU law. In addition, differences in various concepts throughout the whole of the EU hamper those sanctioning objectives and potentially carry negative implications for the protection of fundamental rights and the exercise of free movement rights by legal entities within the EU, as does the prevailing concept of corporate liability *ex crimine* under EU law. Therefore, this contribution aims to invite further reflection on the constituent conditions for and qualification of corporate liability *ex crimine* in the EU in the light of these various implications. The author argues that aspects of the flexible and neutral concept of corporate criminal liability under Dutch criminal law might be worth considering in that regard.

Ermioni Xanthopolou considers overcriminalisation and sanctioning in the field of EU immigration and migration law. The Facilitators Package has been the subject of intense academic and civil society debate. Key criticism contends that it has introduced an ambiguous scope leading to overcriminalisation in breach of fundamental rights and principles of EU law and international legal standards. While at the time of writing, a European Commission proposal for new legislation is being deliberated, the Court of Justice of the European Union (CJEU) has delivered its landmark ruling in the case of *Kinsa*, clarifying the interpretation of the Directive and setting a limit on excessive criminalisation at national level. The influential potential of *Kinsa* for shaping the reform of the law is undoubtable. Yet, reform is not without challenges, which range from EU constitutional constraints to institutional dynamics in a populist context. The chapter, after outlining the chronic pitfalls of the facilitation legal framework, evaluates the proposed changes, the potential of *Kinsa* and the broader challenges of EU constitutional law for decriminalisation. The chapter contends that, notwithstanding broader constitutional limitations in the absence of a

clear legal basis for decriminalisation, the ruling has a clear decriminalisation message, in line with international and EU fundamental rights law.

Part four of the book looks critically at EU administrative sanctions. Louise Damkjaer Christensen examines the relationship between financial sanctions and the prevention of money laundering. She asks the basic question of why governments impose extensive regulatory frameworks and hefty financial sanctions upon financial institutions in the fight against money laundering. She notably examines why financial institutions are the target of anti-money laundering (AML) legislation. After defining what constitutes 'money laundering' and examining the sanctions in EU AML legislation, the financial institution's role in the money laundering process is interrogated. Money laundering is found to be an externality from financial service businesses, explaining why sanctions are needed to incentivise the financial institutions to internalise this externality. Comparing the costs related to governments drafting, adoption, and enforcement of AML legislation with the costs related to implementing and complying to AML legislation, it is argued that the Government is essentially outsourcing the costs of money laundering prevention to financial institutions.

1.3 CONCLUSION

EU sanctions continue to be a significant topic and have gained new momentum after Russia's full-scale invasion of Ukraine in 2022. The contributors to this book have been invited to explore various questions and aspects related to EU sanctions law. We would like to thank the Swedish Network for European Legal Studies for making this possible by generously sponsoring the conference at which most of the draft papers were initially discussed, and for including our book in the series on Swedish Studies in European Law.