



FORCE MAJEURE, HARDSHIP AND CONTRACT ADAPTATION IN THE CONTEXT OF EU SANCTIONS AND GLOBAL CRISES

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ABSTRACT

Recent geopolitical developments, including the expansion of European Union sanctions, armed conflicts, and global economic disruptions, have significantly affected the performance of contractual obligations within and beyond the EU. These events challenge traditional doctrines of force majeure and hardship, raising questions about contractual stability, risk allocation, and judicial intervention. EU restrictive measures, in particular, create complex legal and factual scenarios: in some cases they may lead to contract nullity, in others they render performance legally or factually impossible, or cause serious economic or regulatory imbalance addressed through hardship. The primary objective of this study is to identify the principles and criteria courts should apply when assessing whether EU restrictive measures constitute grounds for contract nullity, force majeure, or hardship. The research also examines contract adaptation as a preferred remedial mechanism, highlighting circumstances in which courts may modify contractual terms based on good faith rather than terminate the contract. Methodologically, the study combines doctrinal legal analysis with a comparative approach, examining national legislation, supranational soft law instruments, and relevant case law, including proceedings related to the COVID-19 pandemic, where contracts were substantially hindered or rendered impossible. This allows identification of convergent principles as well as divergences in judicial interpretation. The paper is structured in six sections, covering the historical and normative framework of EU restrictive measures, contract nullity, force majeure, and hardship. The findings provide answers to the research question and highlight the principles and criteria that courts can follow in assessing the legal effects of EU restrictive measures. Overall, the study contributes to debates on the adaptability of obligations law and emphasizes contract adaptation as a mechanism for preserving legal certainty and economic resilience under extraordinary circumstances.

Keywords: Contract adaptation EU, Sanctions, Force majeure, Hardship, Contract adaptation

1. INTRODUCTION

Recent geopolitical developments, including the expansion of European Union¹ sanctions, armed conflicts, and global economic disruptions, have profoundly affected the performance of contractual obligations within and beyond the EU. The increasing frequency and scale of regulatory and geopolitical shocks challenge traditional doctrines of force majeure and hardship in obligations law, raising critical questions regarding contractual stability and the adaptability of contract law in times of crisis. EU restrictive measures, in particular, present complex legal and factual scenarios. While in some instances such measures may lead to contract nullity, in others they create legal or factual impossibility of performance or result in serious economic or regulatory imbalance addressed through hardship. These distinctions are not merely theoretical: they carry significant implications for contracting parties, affecting the potential remedies available under domestic and supranational legal instruments. Consequently, they highlight the complexity of determining whether EU restrictive measures constitute grounds for contract nullity, force majeure, or hardship. The primary objective of this study is to identify the principles and criteria that courts should apply when assessing the legal consequences of EU restrictive measures on contractual obligations. The research further examines the role of contract adaptation as a preferred remedial mechanism, emphasizing circumstances in which courts may modify contractual terms in accordance with the principle of good faith, rather than terminate the contract. The paper is structured into seven sections. Following the introduction, the second section provides an analysis of the historical and normative framework of EU restrictive measures, alongside contemporary developments. The third section examines contract nullity as a potential legal consequence of the impact of EU restrictive measures. The fourth section focuses on the doctrine of force majeure, with particular attention to the assumptions of foreseeability, inevitability, and insurmountability. The fifth section addresses hardship as a flexible mechanism for managing structural imbalances resulting from sudden regulatory or geopolitical changes. The sixth section analyses certain aspects of relevant case law concerning EU restrictive measures and COVID-19 pandemic. Finally, concluding considerations, based on the overall results of the conducted research and the comparison of the solutions presented in national regulations and soft law legal instruments, provide an answer to the research question and highlight the principles and criteria that can be identified as those which courts should follow when assessing whether EU restrictive measures constitute grounds for contract nullity, force majeure, or hardship. The arguments presented in this paper are further supported by relevant case law in proceedings related to the sanctions and COVID-19 pandemic, in which contracts were likewise affected by measures that substantially hindered or rendered the performance

¹ Hereinafter referred to as: EU.

of contractual obligations impossible. Methodologically, the study adopts a doctrinal legal approach complemented by a comparative perspective. It systematically examines national legislation, supranational soft law instruments of private law and relevant judicial decisions, thereby identifying convergent principles as well as divergences in interpretation. This approach enables a rigorous evaluation of the conditions under which EU restrictive measures may impact contract validity and the applicability of the institutes of contract nullity, force majeure and hardship. The research contributes to scholarly debates on the adaptability of obligations law within the EU, highlighting contract adaptation as a mechanism for maintaining both legal certainty and economic resilience under extraordinary circumstances.

2. LEGAL NATURE OF EU SANCTIONS – A RESPONSE TO GLOBAL CRISES

Sanctions in international law² constitute one of the most widely used instruments of foreign policy, through which governments and international organizations respond to national or international violations.³ During the last decade, there has been a significant stagnation in the application of UN sanctions, as the permanent members of the Security Council were unable to reach decisions on a number of major global security challenges.⁴ Generally speaking, there has been an increase in the adoption of autonomous, or unilateral, sanctions by the EU and the United States⁵, which have assumed a leading role in shaping the global agenda through various sanctions regimes.⁶

² For an overview of the literature on sanctions in international law, see: Brück, O., *Les sanctions en droit international public*, A. Pedone, Paris, 1933.; Reisman, W.M., *Sanctions and Enforcement*, in: Black, C.E.; Falk, R.A. (eds.), *The Future of International Legal Order*, Vol. 3: Conflict Management, Princeton University Press, Princeton, 2019, pp. 273. – 335.; Doxey, M.P., *International Sanctions in Contemporary Perspective*, Macmillan Press, Basingstoke, 1987; Lapaš, D., *Sankcija u međunarodnom pravu*, Pravni fakultet u Zagrebu, Zagreb, 2003.; Abi – Saab, G., *The concept of Sanction in International Law*, in: Gowlland – Debbas, V. (eds.), *United Nations Sanctions and International Law*, Kluwer Law International, The Hague, 2001, pp. 29. – 41.; Lloyd Brown – John, C., *Multilateral Sanctions in International Law*, Praeger Publishers Inc, New York, 1975; Shaw, M.N., *International Law*, Seventh Edition, Cambridge University Press, Cambridge, 2014, p. 3. and 901. sq.

³ Meissner, K., *How to sanction international wrongdoing? The design of EU restrictive measures*, in: *The Review of International Organizations*, Vol. 18, No. 1, 2023, p. 61.

⁴ For example, following Russia's annexation of Crimea in 2014, the UN Security Council was unable to adopt a decision on imposing sanctions against the Russian Federation, as it exercised its veto power. See: *Security Council Fails to Adopt Draft Resolution on Ending Ukraine Crisis, as Russian Federation Wields Veto*, United Nations Meetings Coverage, Available at: [<https://press.un.org/en/2022/sc14808.doc.htm>], Accessed 11 March 2026.

⁵ Hereinafter referred to as: USA.

⁶ See in: Cardwell, P. J.; Moret, E., *The EU, Sanctions and Regional Leadership*, *European Security*, Vol. 32, No. 1, 2023, pp. 1. – 2.

2.1. EU Sanctions: A Historical Review, Normative Framework, and Contemporary Developments

The number of sanctions, or restrictive measures, as the term is used in EU acts, imposed by the EU has increased significantly since the early 1990s.⁷ Likewise, these measures have developed in terms of their severity and significance, through which the EU has established itself as one of the most important international actors in responding to violations of international law norms.⁸ However, the first sanctions imposed by the European Economic Community date back to the early 1980s, namely against the Soviet Union in 1981 and Argentina in 1982. In the literature, the ‘London Report’ of 1981 is often cited as the basis for their adoption, serving as a foundation for cooperation in the field of foreign policy.⁹ In the early development of the EU sanctions system, restrictive measures were a part of the Common Commercial Policy and were largely characterized by the implementation of UN sanctions.¹⁰ The adoption of the Treaty of Maastricht on European Union¹¹ in 1992 marked a new phase in the development of EU sanctions policy, as Title II of the new treaty¹² granted the EU the authority to impose autonomous restrictive measures within the framework of the Common Foreign and Security Policy¹³ and introduced a two-tier procedure for the adoption of EU restrictive measures.¹⁴ The Treaty of Lisbon¹⁵ of 2007 further contributed to the development of EU sanctions by defining the fundamental principles and mechanisms of the CFSP and by further clarifying the procedure for adopting restrictive measures.¹⁶ It also provided for the establishment of the European External Action Service¹⁷ and the strengthening of the powers of the High Representative of the

⁷ For a graphical overview of the growth dynamics in the number of restrictive measures imposed by the EU, see: Giumelli, F.; Hoffmann, F.; Książczaková, A., *The When, What, Where and Why of European Union Sanctions*, European Security, Vol. 30, No. 1, 2021, p. 9.

⁸ Khort, I., *The Sanctions Principles – Based Regulation: A Blueprint for a New Approach for the EU Sanctions Policy (Part I)*, European Company and Financial Law Review, Vol. 21, No. 2, 2024, p. 193.

⁹ Giumelli, F.; Hoffmann, F.; Książczaková, A., *op. cit.*, note 7, p. 5.

¹⁰ Kern, A., *Economic Sanctions: Law and Public Policy*, Palgrave Macmillan, Basingstoke, 2009., p. 129.

¹¹ Treaty on European Union, 7 Feb. 1992, 1992 O.J. (C 191) 1, hereinafter referred to as: TEU (Maastricht).

¹² V. *Ibid.*, Chapter II.

¹³ Hereinafter referred to as: CFSP.

¹⁴ See in: Giumelli, F.; Hoffmann, F.; Książczaková, A., *op. cit.*, note 7, p. 6., Khort, I., *op. cit.*, note 8, p. 201., Anthony, I., *Sanctions Applied by the European Union and United Nations*, in: SIPRI Yearbook 2002: Armaments, Disarmament and International Security, 2002., p. 211.

¹⁵ Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community [2007] OJ C 306/01 (hereinafter referred to as: TEU (Lisbon)).

¹⁶ Khort, I., *op. cit.*, note 8, p. 202.

¹⁷ Hereinafter referred to as: EEAS.

EU for Foreign Affairs and Security Policy¹⁸. Finally, the TEU (Lisbon) explicitly emphasized the financial and economic nature of EU restrictive measures.¹⁹ The measures are adopted on the basis of decisions brought by the European Council and the Council of the EU²⁰ within the framework of the CFSP, which, pursuant to Article 24 of the Treaty on European Union²¹, are adopted unanimously, except where the Treaties provide otherwise. In accordance with Article 29 of the TEU and Article 215 of the Treaty on the Functioning of the European Union²², The Council adopts decisions on the imposition of sanctions, which are subsequently implemented through The Council regulations.²³

2.2. The Legal Basis, Adoption Procedures, and Soft Law Instruments regarding Restrictive Measures

As noted above, the basis for adopting restrictive measures are the decisions of the European Council and the Council of the EU within the framework of the CFSP, adopted pursuant to Article 24 of the TEU. Subsequently, the High Representative of the EU for Foreign Affairs and Security Policy and the European Commission prepare a draft joint proposal of the restrictive measures for The Council²⁴, which decides on their adoption by a qualified majority.²⁵ The Council regulations, applied individually with respect to each state targeted by the sanctions, establish the fundamental aspects of the implementation and enforcement of EU restrictive measures.²⁶ These regulations define the scope of application of restrictive measures, the

¹⁸ The position of the High Representative was originally established in 1997 on the basis of the Treaty of Amsterdam, although responsibilities in the field of foreign policy were shared with the European Commissioner for External Relations. See: *EU High Representative for Foreign Affairs and Security Policy*, Available at: [<https://www.consilium.europa.eu/en/council-eu/high-representative-foreign-affairs-security-policy/>], Accessed 12 March 2026.

¹⁹ See: Article 188 K (1) TEU (Lisbon)

²⁰ Hereinafter referred to as: The Council.

²¹ Consolidated version of the Treaty on European Union [2012] OJ C 326/13 (hereinafter referred to as: TEU)

²² Consolidated version of the Treaty on the Functioning of the European Union [2012] OJ C 326/47 (hereinafter referred to as: TFEU).

²³ Giumelli, F.; Hoffmann, F.; Książczaková, A., *op. cit.*, note 7, p. 6.

²⁴ Article 29. of the TEU constitutes legal basis for the decisions of the Council of Ministers regarding sanctions regimes. See: *Ibid.*

²⁵ See: Article 215 (1) TFEU.

²⁶ See: Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine [2014] OJ L 78, Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine [2014] OJ L 229, Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation (EU) No 961/2010 [2012] OJ L 88, Council Regulation (EU) No 36/2012 of 18

exchange of information between competent authorities regarding the measures, key definitions for their implementation, the prohibition of circumvention, the authorization of exemptions from sanctions, and the establishment of liability for violations.²⁷ The EEAS and the European Commission assist The Council in the preparation of legal texts and also provide support to Member States in the implementation of the restrictive measures.²⁸ Certain soft law instruments on sanctions have also played an important role in the development of the EU policy on restrictive measures. In this regard, there are three key legal instruments governing the adoption of EU restrictive measures. Such measures are adopted on the basis of the general objectives and guiding principles set out in the Basic Principles on the Use of Restrictive Measures (Sanctions)²⁹ of 2004, and are defined and implemented in accordance with the Guidelines on Implementation and Evaluation of Restrictive Measures (Sanctions) within the Framework of the EU Common Foreign and Security Policy³⁰ of 2003. The Sanctions Guidelines contain definitions of terms used in the legal instruments regulating restrictive measures, as well as recommendations for determining and implementing sanctions in terms of their methods, objectives, enforcement, monitoring, limitations, and other aspects. The aim of the Sanctions Guidelines is to promote the uniform application of restrictive measures, and they were most recently updated in 2018.³¹ Finally, in 2005, the Best Practices for the Effective Implementation of Restrictive Measures³² were adopted, and they were most recently updated in 2024.³³ The Best Practices provide recommendations for

January 2012 concerning restrictive measures in view of the situation in Syria and repealing Regulation (EU) No 442/2011 [2012] OJ L 16, Council Regulation (EU) 2017/2063 of 13 November 2017 concerning restrictive measures in view of the situation in Venezuela [2017] OJ L 295, among others.

²⁷ Khort, I., *op. cit.*, note 8, p. 203.

²⁸ Giumelli, F.; Hoffmann, F.; Książczaková, A., *op. cit.*, note 7, p. 6.

²⁹ Council of the European Union, Basic Principles on the Use of Restrictive Measures (Sanctions) [2004] 10198/1/04, Available at: [<https://data.consilium.europa.eu/doc/document/ST-10198-2004-REV-1/en/pdf>], Accessed 13 March 2026 (hereinafter referred to as: Basic Principles).

³⁰ 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 [2003] 15598/17, Available at: [<https://data.consilium.europa.eu/doc/document/ST-11623-2024-INIT/en/pdf>], Accessed 12 March 2026 (hereinafter referred to as: Sanctions Guidelines).

³¹ See: *Ibidem*. It should be noted, as several authors have pointed out, that the Sanctions Guidelines were adopted prior to the Basic Principles, even though the latter regulate the very basis for adopting restrictive measures, which arguably suggests that the order of their adoption should have been reversed. See in: Portela, C., *Where and Why does the EU Impose Sanctions?*, Politique européenne, No. 17, 2005., p. 90.

³² Council of the European Union, Best Practices for the Effective Implementation of Restrictive Measures [2005] 15114/05.

³³ Council of the European Union, Update of the EU Best Practices for the Effective Implementation of Restrictive Measures [2024] 11623/24, Available at:

the effective implementation of restrictive measures in accordance with applicable EU law and national laws, particularly regarding the designation and identification of persons and entities subject to targeted restrictive measures, financial restrictive measures, the prohibition on the provision of goods, as well as coordination and cooperation.³⁴ The adoption of these soft law instruments has significantly contributed to the increased use of restrictive measures, despite the fact that they are non-binding instruments that do not impose any limitations on the EU restrictive measures policy.³⁵ As a result, there are more than forty different sanctions regimes currently in force.³⁶ EU restrictive measures can be examined from multiple perspectives, taking into account their adoption procedure³⁷, addressees of the sanctions³⁸ and their content. In terms of content, the types of EU restrictive measures include arms embargoes (prohibiting the sale, supply, transport, or export of weapons), travel bans (prohibiting entry to or transit through the territory of Member States for certain individuals), asset freezes (targeting the property of individuals or entities subject to restrictive measures), trade restrictions (limiting or prohibiting imports or exports), financial restrictions (affecting the financial institutions of the targeted country, such as prohibitions on payments), and diplomatic restrictions.³⁹

3. THE NULLITY OF A CONTRACT AS A POSSIBLE LEGAL CONSEQUENCE OF THE IMPACT OF EU RESTRICTIVE MEASURES ON CONTRACT

The nullity of a contract constitutes the most severe legal consequence that may arise from the application of EU restrictive measures, as it entails the complete annulment of the contract and all its legal effects from the moment of its conclu-

[<https://data.consilium.europa.eu/doc/document/ST-11623-2024-INIT/en/pdf>], Accessed 13 March 2026 (hereinafter referred to as: Best Practices).

³⁴ See: *Ibidem*.

³⁵ V. Khort, I., *op. cit.*, note 8, p. 205. and Druláková R.; Rolenc J.M.; Trávníčková Z., Zemanová, Š., *Assessing the Effectiveness of the EU Sanction Policy*, Central European Journal of International and Security Studies, Vol. 4, No. 1, 2010, p. 117.

³⁶ For an overview of EU restrictive measures currently in force, see: *EU Sanctions Map*, Available at: [<https://www.sanctionsmap.eu/#/main>], Accessed 13 March 2026.

³⁷ The EU can impose restrictive measures in three ways: as multilateral sanctions adopted by the UN Security Council and transposed into EU law; as autonomous (unilateral) sanctions that supplement UN sanctions; and as fully autonomous sanctions imposed by the EU entirely outside the UN framework. See in: Cardwell, P. J.; Moret, E., *op. cit.*, note 6, p. 5.

³⁸ In this regard, we distinguish between internal and external sanctions. For more on this, see: Pospieszna, P.; Onderco M.; Van der Veer, R., *Comparing Public Attitudes Towards Internal and External EU Sanctions: the Role of Populism, Trust and Euroscepticism*, East European Politics, Vol. 40, No. 2, 2024, p. 347.

³⁹ Giumelli, F.; Hoffmann, F.; Książczaková, A., *op. cit.*, note 7, p. 8.

sion (*ab initio*).⁴⁰ Within civil law doctrine, a legal act is deemed null where it fails to produce the legal effects that would have arisen had it been valid. Given that nullity operates *ex tunc*, such contracts are treated as though they had never been concluded and are therefore regarded as legally non-existent. As a rule, a contract affected by nullity cannot subsequently be validated, even if the underlying cause ceases to exist, except in exceptional cases explicitly provided by the law. The doctrine of nullity serves to safeguard public order and the fundamental principles of the legal system. Its defining characteristics include its operation by force of law (*ex lege*), the obligation of courts to consider it of their own motion (*ex officio*), the standing of any interested party to invoke it, and the absence of limitation periods for its assertion.⁴¹ Illegality, understood as inconsistency with statutory provisions or mandatory rules, represents a principal ground for nullity. For instance, Croatian Civil Obligations Act provides that a contract contrary to the Constitution, mandatory provisions, or public morals is null, unless the purpose of the infringed rule indicates a different legal consequence.⁴² Comparable solutions are found in other legal systems: German *Bürgerliches Gesetzbuch* renders null legal transactions that infringe statutory prohibitions⁴³, Austrian *Allgemeines Bürgerliches Gesetzbuch* invalidates contracts contrary to legal prohibitions or public policy⁴⁴; and French *Code civil* requires lawful content as a condition for contractual validity⁴⁵. As EU law forms an integral part of the legal orders of the Member States and enjoys primacy over conflicting national norms⁴⁶, EU decisions and regulations imposing restrictive measures constitute part of the national laws and acquire binding force

⁴⁰ For a detailed discussion on the nullity of contracts and its assumptions, see: Klarić, P.; Vedriš, M., *Gradansko pravo, XV. izmijenjeno i dopunjeno izdanje*, Narodne novine, Zagreb, 2025., pp. 137. sq.; Slakoper, Z.; Gorenc, V., *Obvezno pravo, Opći dio: Sklapanje, promjene i prestanak ugovora*, Novi informator, Zagreb, 2009., pp. 314. sq.; Kačer, H.; Radolović, A.; Slakoper, Z., *Zakon o obveznim odnosima s komentarom*, Poslovni zbornik, Zagreb, 2006., pp. 323. sq.; Gorenc, V. et al., *Komentar Zakona o obveznim odnosima*, Narodne novine, Zagreb, 2014., pp. 513. sq.

⁴¹ Slakoper, Z.; Gorenc, V., *op. cit.*, note 40, p. 315.

⁴² Civil Obligations Act, Official Gazette No. 35/2005, 41/2008, 125/2011, 78/2015, 29/2018, 126/2021, 114/2022, 156/2022, 145/2023, 155/2023 (hereinafter referred to as: COA), Art. 322. para 1.

⁴³ *Bürgerliches Gesetzbuch*, RGBI. S. 195, 18 August 1896, in the version promulgated on 2 January 2002 (BGBl p. 42, corrected p. 2909; 2003 p. 738), last amended by the Act of 4 February 2026 (BGB I p. 33), in force since 10 February 2026. (hereinafter referred to as: BGB), § 34. and § 134.

⁴⁴ *Allgemeines Bürgerliches Gesetzbuch*, JGS No. 946/1811, last amended by BGBl. I No. 111/2025 (hereinafter referred to as: ABGB), § 879.

⁴⁵ *Code civil*, in force since 21 March 1804, version as of 01 January 2026 (hereinafter referred to as: *Code civil*), Art. 1128.

⁴⁶ See: Constitution of the Republic of Croatia, Official Gazette No. 56/1990, 135/1997, 113/2000, 28/2001, 76/2010, 5/2014 (hereinafter referred to as: Constitution of the Republic of Croatia), Art. 134. and 141.a., *Grundgesetz für die Bundesrepublik Deutschland*, the consolidated version published in the Federal Law Gazette, Part III, classification number 100-1, last amended by Article 1 of the Act of 22 March 2025 (Federal Law Gazette 2025 I No. 94), Art. 23., French Constitution of 4 October

within domestic legal systems. Accordingly, where such measures prohibit the performance of a contractual obligation, that obligation - and potentially the contract as a whole - may be regarded as contrary to mandatory law and thus null under national civil law. In this context, particular attention should be given to the temporal dimension of nullity, namely the question whether, for the doctrine of nullity to apply, the ground of nullity - in the present context, an EU restrictive measure - must exist at the time of the conclusion of the contract, or whether a sanction adopted subsequently may also render a previously valid contract null. The answer to this question should be guided by the principle that the validity of a contract is assessed by reference to the moment of its conclusion. Neither the major European civil codes nor the Croatian COA contain an express statutory provision establishing this rule; rather, it derives from general principles of law and has been consistently affirmed in judicial practice. In the Republic of Croatia, for example, the principle follows from the constitutional prohibition of the retroactive application of laws and other legal acts⁴⁷, whereas in the French legal system such a prohibition is expressly enshrined in the *Code civil*.⁴⁸ Accordingly, the principle that the requirements for contractual validity must be assessed at the time of contract formation has been recognised in the jurisprudence of the French Court of Cassation⁴⁹, the German *Bundesgerichtshof*⁵⁰, and the Austrian *Oberster Gerichtshof*.⁵¹ It follows that a contract may be declared null on the ground of incompatibility with a prohibition imposed by an EU restrictive measure only where the relevant restrictive measure was already in force at the time the contract was concluded. Conversely, where a restrictive measure capable of affecting the performance of the contract is adopted only after the contract has been validly concluded, it cannot subsequently render that contract null. Rather, the prohibition contained in such a measure may be characterised as an event giving rise to force majeure, resulting in subsequent objective impossibility of performance and thereby constituting a legal basis for the discharge of contractual obligations. Illustrative examples of measures that may trigger contract nullity include arms embargoes⁵², import and export bans⁵³, and financial

1958, Art. 55., Constitution of Austria (as amended in 2024): Federal Constitutional Act (*Bundes-Verfassungsgesetz*) (B-VG) (reinst. 1945), Art. 50a and 50b.

⁴⁷ See: Constitution of the Republic of Croatia, Art. 90. para 4.

⁴⁸ See: *Code civil*, Art 2.

⁴⁹ See the decision of the Court of Cassation, Civil Division, 1 No 06-15.090 of 12 July 2007.

⁵⁰ See the decision of *Bundesgerichtshof* No VIII ZR 344/13 of 25 June 2014.

⁵¹ See the decision of *Oberster Gerichtshof* No 5 Ob 67/95 of 11 March 1997.

⁵² See: Council Regulation (EC) No 314/2004 of 19 February 2004 concerning certain restrictive measures in respect of Zimbabwe [2004] OJ L 55/1 (hereinafter referred to as: Council Regulation (EC) No 314/2004), Art. 2.

⁵³ See: Council Regulation (EU) 2017/1509 of 30 August 2017 concerning restrictive measures against the Democratic People's Republic of Korea and repealing Regulation (EC) No 329/2007 [2017] OJ L 224/1, Chapter II, Art. 3.

sanctions targeting specific persons or entities, particularly prohibitions on making funds or economic resources available to them.⁵⁴ These prohibitions are explicitly established in EU regulations and as such form part of the binding legal framework of the Member States, with their effectiveness reinforced, *inter alia*, through the application of the nullity doctrine. It should, however, be emphasized that EU restrictive measures do not expressly prescribe contract nullity as a consequence of their breach. Rather, the adoption of sanctions and enforcement mechanisms is left to the discretion of the Member States.⁵⁵ Although national implementing legislation frequently does not explicitly regulate the nullity of contracts the fulfillment of which is prohibited by EU restrictive measures, general principles of civil law provide a sufficient legal basis for courts to declare such contracts null in individual cases. Finally, civil law recognises the concept of partial nullity, whereby only the unlawful provision is set aside, provided that the remainder of the contract can subsist independently.⁵⁶ Consequently, contracts affected by EU restrictive measures may, where appropriate, remain in force in a modified form, with only the offending provisions removed.

4. APPLICABILITY AND LIMITS OF FORCE MAJEURE IN THE CONTEXT OF EU RESTRICTIVE MEASURES

Objective impossibility of performance is one of the modalities for the extinction of an obligation and arises when the impossibility is caused by an event that is extraordinary, external, unforeseeable, unavoidable or irremediable, which could not have been prevented and which occurs after the conclusion of the contract but before the obligation becomes due. In legal doctrine, events possessing these characteristics are encompassed by the concept of force majeure.⁵⁷ Various circum-

⁵⁴ See: European Commission, *European Union, Consolidated Financial Sanctions List*, Available at: [<https://data.europa.eu/data/datasets/consolidated-list-of-persons-groups-and-entities-subject-to-eu-financial-sanctions?locale=en>], Accessed 16 March 2026.

⁵⁵ See: Council Regulation (EC) No 314/2004, Art. 12. In the Republic of Croatia application of EU restrictive measures is regulated by the Law on Restrictive Measures, Official Gazzete No. 133/2023, 151/2025 and General Guidelines on the Application of the Law on Restrictive Measuresl, Available at: [<https://mvvp.gov.hr/UserDocsImages/2024/datoteke/General%20Guidelines%20on%20the%20applicationof%20the%20Law%20on%20restrictive%20measures.pdf>], Accessed 17 March 2026.

⁵⁶ See: Klarić, P.; Vedriš, M., *op. cit.*, note 40, pp. 150 – 151; BGB, § 139, COA, Art. 324., *Code civil*, Art. 1184.

⁵⁷ For a review of the literature on force majeure, see: Musgrave, T. D., *Force Majeure and the Law: Acts of God in Comparative and Historical Perspective*, Routledge, 2025, Abingdon, Garb, L.; Copeman, J.; Mendoza, R. (eds.), *Force Majeure: An International Comparative Analysis*, Koninklijke Brill, Leiden, 2026.; Slakoper, Z.; Gorenc, V., *op. cit.*, note 40, p. 441 sq. and 564 sq.; Klarić, P.; Vedriš, M., *op. cit.*, note 40, p. 478. sq.; Gorenc V. *et al.*, *op. cit.*, note 40, p. 616. sq.

stances may give rise to impossibility of performance, which can be categorized as factual (such as the destruction of the object of the obligation) or legal (such as import or export prohibitions), and, in terms of their duration, as either permanent or temporary.⁵⁸ EU restrictive measures may be regarded as force majeure and, consequently, may lead to the extinction of an obligation or release from liability for performance, provided that all the conditions for the existence of force majeure are met in the specific case. In legal doctrine, as previously noted, it is required that the event is beyond the debtor's control, unforeseeable, and that its consequences could not have been avoided. Nevertheless, European civil codes often do not provide an explicit definition of force majeure. For instance, the German BGB stipulates that the right to performance is excluded to the extent that it is impossible for the debtor or for anyone else.⁵⁹ Similarly, the Austrian ABGB addresses only the impossibility of performance, providing that the accidental and total destruction of a particular thing extinguishes all obligations, including the obligation to compensate for its value. This principle also applies to cases in which the fulfillment of an obligation or the payment of a debt becomes impossible due to another event.⁶⁰ The Croatian COA does not explicitly mention force majeure, yet it nevertheless incorporates its elements within the framework of release from liability for performance.⁶¹ Among the aforementioned legal systems, only the French *Code civil* provides an explicit definition of force majeure, stipulating that force majeure in contractual matters arises when an event beyond the control of the debtor, which could not reasonably have been foreseen at the time the contract was concluded and whose effects cannot be avoided by appropriate measures, prevents the debtor from performing their obligation.⁶² Provisions on force majeure are also included in supranational soft law instruments aimed at harmonizing private (contractual) law, such as the UNIDROIT Principles⁶³, the Principles of European Contract Law⁶⁴, and the Draft Common Frame of Reference⁶⁵. The UNIDROIT Principles, the PECL, and the DCFR contain virtually identical pro-

⁵⁸ Slakoper, Z.; Gorenc, V., *op. cit.*, note 40, p. 564.

⁵⁹ See: BGB, § 275 para. 1. and 2.

⁶⁰ See: ABGB, § 1447.

⁶¹ See: COA, Art. 343. and Art. 373.

⁶² *Code civil*, Art. 1218. para 1.

⁶³ UNIDROIT Principles of International Commercial Contracts, 2016, Available at: [<https://www.unidroit.org/wp-content/uploads/2021/06/Unidroit-Principles-2016-English-bl.pdf>], Accessed 17 March 2026. (hereinafter referred to as: UNIDROIT Principles).

⁶⁴ Principles of European Contract Law, Available at: [https://www.trans-lex.org/400200/_/pecl/], Accessed 17 March 2026 (hereinafter referred to as: PECL)

⁶⁵ Draft Common Frame of Reference for European Private Law, Comment, Available at: [https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/EUROPEAN_PRIVATE_LAW/]

visions on force majeure, according to which a party's non-performance is excused if it demonstrates that it is due to an impediment beyond its control and that it could not reasonably have been expected to take the impediment into account at the time of the conclusion of the contract, or to have avoided or overcome the impediment or its consequences.⁶⁶ In light of the aforementioned rules on force majeure, an EU restrictive measure may be considered force majeure if it is adopted after the conclusion of the contract⁶⁷, prevents the debtor from performing their obligation⁶⁸, was unforeseeable for the debtor⁶⁹, and is unavoidable, irreparable, and insurmountable.⁷⁰ Examples of EU restrictive measures that may qualify as force majeure in terms of their impact on affected contracts often coincide with those that could potentially result in contract nullity, such as arms embargoes, import or export bans, and financial measures, including asset freezes and payment prohibitions.⁷¹ Specifically, the prohibitions contained in EU restrictive measures, in terms of their impact on a contract, may be interpreted both as a conflict with mandatory legal provisions, resulting in contract nullity, and as an event causing impossibility of performance under the concept of force majeure. It should be emphasized that, in such cases, the impossibility of performance will primarily be regarded as legal in nature⁷², and only in a smaller number of in-

EN_EPL_20100107_Principles_definitions_and_model_rules_of_European_private_law_-_Draft_Common_Frame_of_Reference_DCFR_.pdf], Accessed 17 March 2026.

⁶⁶ See: PECL, Art. 8:108 (Excuse due to an impediment) para 1. in comparison to UNIDROIT Principles, Art. 7.1.7. (Force Majeure) para 1. and DCFR, Art. III. – 3:104 para 1. (Excuse due to an impediment).

⁶⁷ If EU restrictive measures were already imposed at the time of contract conclusion, the requirement of unpredictability is not satisfied, since the debtor was aware of, or should have been aware of, such measures and should have taken them into account; consequently, they cannot rely on them to avoid contractual obligations. However, if such measures existed at the time of conclusion but were unknown to the parties, the application of rules on mistake (*error*) may be considered. See: DCFR, Art. III – 3:104, *Comments*.

⁶⁸ It appears that there is no need to specifically refer to a claim that an event is beyond the debtor's control, as EU restrictive measures are imposed by EU bodies and, as such, are always external, i.e., beyond the debtor's control.

⁶⁹ The wording of national provisions on force majeure suggests that the relevant event must be objectively unforeseeable. See: COA, Art. 343 and 373., *Code civil*, Art. 1218. para 1. However, a more appropriate standard is whether a diligent contracting party could have foreseen or reasonably been expected to take the event into account, as reflected in the UNIDROIT Principles, PECL, and DCFR. See: *supra*, note 66. This is also the view of the authors in Gorenc, V. *et al.*, *op. cit.*, note 40, p. 618.

⁷⁰ In relation to this assumption of force majeure, both Croatian COA and the UNIDROIT Principles, PECL, and DCFR refer to the possibilities of the specific debtor, thus adopting a subjective criterion, whereas the French *Code civil* retains the objective criterion of inevitability in this context. See: *supra*, note 66. in comparison to COA, Art. 343 and 373., *Code civil*, Art. 1218. para 1.

⁷¹ See *supra*, p. 7.

⁷² As in the case of an arms embargo, where trade may be physically possible, but is illegal and, as such, constitutes a legal, rather than factual, impossibility of performance.

stances as factual impossibility⁷³. Whether an EU restrictive measure will be regarded as force majeure, or whether the entire contract or part thereof will be declared null, depends on the court's interpretation in the specific case. Other examples of EU restrictive measures that may constitute force majeure include travel bans⁷⁴, where the performance of a contract - relying on the entry into or transit through the territory of EU Member States by a sanctioned person - becomes factually impossible, as well as trade restrictions, such as prohibitions on road transport of goods within the EU by carriers with business operations in Russia, or bans on port access for vessels registered under the flag of the Russian Federation⁷⁵, where the performance of contracts dependent on the transport of goods through the EU or access to EU maritime ports also becomes factually impossible. Considering force majeure more broadly, beyond the EU sanctions framework and in the context of global crises, an illustrative example of an event that, in terms of its impact on affected contractual relationships, could be regarded as force majeure was the pandemic caused by the SARS-CoV-2 virus⁷⁶. Measures to contain the pandemic included, among others, border closures and movement restrictions, work prohibitions, bans on gatherings, and similar interventions⁷⁷, which resulted in the impossibility of performing obligations under a large number of contracts. However, courts have not automatically recognized the COVID-19 pandemic as force majeure; rather, the fulfillment of the conditions for force majeure has been assessed on a case-by-case basis. An example of a decision in which the COVID-19 pandemic was deemed force majeure, and thus constituted a basis for exemption from contractual obligations, is the judgment of the French Court of Cassation of July 6, 2022⁷⁸, which explicitly stated that the pandemic and its developments constituted a force majeure event preventing the performance of obligations.⁷⁹ The legal consequence of the impact of EU restrictive measures on a contract, when considered as force majeure, consists in the release

⁷³ In the case of financial measures such as asset freezes or payment bans, the performance of a contractual obligation involving a bank payment will not be factually possible, as the payment cannot be processed.

⁷⁴ See: Council Decision 2014/145/CFSP of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine [2014] OJ L 78, Art. 1.

⁷⁵ See: Council Regulation (EU) 2022/576 of 8 April 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine [2022] OJ L 111, Art. 1, para 11.

⁷⁶ Hereinafter referred to as: COVID – 19.

⁷⁷ See: Roksandić, S.; Grđan, K., *COVID-19 i razumijevanje pravnih propisa vezanih uz suzbijanje zaraznih bolesti u Republici Hrvatskoj – osvrt na bitna pravna pitanja od početka pandemije do listopada 2020.*, Pravni vjesnik, Vol. 36. No. 3-4, 2020., pp. 327.- 343.

⁷⁸ Court of Cassation, Civil Division, First Civil Chamber, 21-11.310, of 6 July, 2022.

⁷⁹ See: *Ibid.*

of the debtor from the obligation whose performance has become impossible due to the sanctions. In this regard, the Croatian COA provides for the debtor's exemption from liability for damages, the German BGB stipulates that the right to performance is excluded, the Austrian ABGB provides that all obligations are extinguished, and the French *Code civil* states that the debtor is released from the obligation to the extent that its performance is rendered impossible due to force majeure.⁸⁰ Furthermore, the latter provides that, if the impediment to performance is temporary, the performance of the contract is suspended, except where the resulting delay justifies the termination of the contract.⁸¹ The same principle is reflected in relevant soft law instruments, as the UNIDROIT Principles, the PECL, and the DCFR prescribe that, as a legal consequence of force majeure, a party is excused from non-performance⁸², with the proviso that, where the excusing impediment is only temporary, the excuse applies for the period during which the impediment exists.⁸³ Finally, it is important to mention the International Chamber of Commerce (ICC) clauses⁸⁴, which are standardized contractual provisions developed by the ICC to assist parties in addressing specific situations in international contracts. The most well-known of these is the ICC Force Majeure Clause, which allows parties in international contracts to overcome issues arising from differences in national legislations.⁸⁵ Of particular interest for the subject of this research is the fact that, in paragraph 3, the ICC Force Majeure Clause lists among the events which are presumed to qualify as force majeure: currency and trade restrictions, embargoes, and sanctions.⁸⁶ Similar to the arrangements found in national laws and soft law instruments of private law, the ICC Force Majeure Clause establishes, as a legal consequence of the impact of force majeure on a contract, the excusal of the obligation to perform, with the proviso that, in the case of a temporary impediment, performance is suspended for the duration of the impediment.⁸⁷

⁸⁰ See: COA, Art. 343. and 373., BGB, § 275., ABGB, § 1447, *Code civil*, Art. 1351.

⁸¹ See: *Code civil*, Art. 1218.

⁸² See: UNIDROIT Principles, Art. 7.1.7. para 1., PECL, Art. 8:108 para 1. and DCFR Art. III-3:104 para 1.

⁸³ See: UNIDROIT Principles, Art. 7.1.7. para 2., PECL, Art. 8:108 para 2. and DCFR Art. III-3:104 para 3.

⁸⁴ Hereinafter referred to as: ICC Clauses.

⁸⁵ *ICC Force Majeure and Hardship Clauses*, March 2020, Available at: [<https://iccwbo.org/wp-content/uploads/sites/3/2020/03/icc-forcemajeure-hardship-clauses-march-2020.pdf>], Accessed 19 March 2026.

⁸⁶ *ICC Force Majeure Clause*, para 3.

⁸⁷ *ICC Force Majeure Clause*, para 5.

5. HARDSHIP IN CONTRACTUAL OBLIGATIONS AS A RESULT OF EU RESTRICTIVE MEASURES

In certain cases, the application of EU restrictive measures to contracts affected by them does not result in the impossibility of performing contractual obligations, but instead causes excessive and disproportionate difficulties in their performance. This situation in contractual relationships is addressed under the legal concept in common law systems known as hardship, and in continental legal doctrine as change of circumstances or the *rebus sic stantibus* clause, which has been implemented under various designations in different national legal systems.⁸⁸ German legal theory, within the framework of the doctrine of *Störung der Geschäftsgrundlage*⁸⁹, holds that if the circumstances forming the basis of a contract have significantly changed after its conclusion - such that the contracting parties would not have concluded the contract at all had they foreseen such a change, or would have done so under substantially different terms - an adjustment of the contract may be requested.⁹⁰ Only if such adjustment, or modification of the contract, is not possible, may the contract be terminated.⁹¹ French *Code civil* regulates changes in circumstances that result in excessively onerous performance under the theory of *imprévision*, stipulating that if a change in circumstances unforeseen at the time the contract was concluded renders performance excessively burdensome for a party who did not agree to assume the risk, that party may request renegotiation of the contract from its counterparty. If renegotiation is refused or fails, the parties may agree to terminate the contract on a date and under conditions they deter-

⁸⁸ In German and Austrian legal doctrine, this concept is referred to as *Wegfall/Störung der Geschäftsgrundlage*, in France it is known as *imprévision*, in Italy as *eccessiva onerosità sopravvenuta*, and in Croatian legal system as *Izmjena ili raskid ugovora zbog promijenjenih okolnosti* (*Modification or termination of the contract due to changed circumstances*). It is worth noting that the term “hardship” has been used in this paper because it is widely recognized in international commercial practice. For these reasons, the term “hardship” is also employed in the UNIDROIT Principles. See: UNIDROIT Principles, Art. 6.2.1., *Comment*.

⁸⁹ In translation: Disappearance or disruption of the basis of the contract.

⁹⁰ See: BGB, § 313.

⁹¹ For a discussion on the doctrine of *Störung der Geschäftsgrundlage* see in detail in: Rösler, H., *Hardship in German Codified Private Law – In Comparative Perspective to English, French and International Contract Law*, European Review of Private Law, Vol. 15, No. 4, 2007., pp. 483. – 514.; Hondius, E.; Grigoleit, E.H., *Unexpected Circumstances in European Contract Law*, Cambridge University Press, Cambridge, 2011., pp. 55. – 69.; Rösler, H., *Changed and Unforeseen Circumstances in German and International Contract Law*, Slovenian Law Review, Vol. 47, No. 1, 2008., pp. 47 – 58. It is worth noting that Austrian doctrine *Wegfall der Geschäftsgrundlage* is substantively aligned with the German theory of *Störung der Geschäftsgrundlage*, and, in addition, it is not explicitly regulated in the ABGB, which is why it is not particularly emphasized among continental European doctrines on changed circumstances.

mine, or jointly request the court to adapt it.⁹² In this respect, the Croatian COA regulates the institution of contract modification or termination due to changed circumstances, providing that if, due to extraordinary circumstances arising after the conclusion of the contract - which could not have been foreseen at the time of its conclusion - the performance of an obligation by one party becomes excessively onerous or would cause it an unreasonably large loss, that party may request that the contract be modified or even terminated.⁹³ From the abovementioned national provisions on the doctrine of changed circumstances, it follows that, for its application, the change in circumstances must occur after the conclusion of the contract, must be external, extraordinary, and unforeseeable, and must result in an excessive burden on the performance of the obligation by one party. Corresponding conditions for the existence of hardship, or change of circumstances, are also contained in the UNIDROIT Principles, PECL, and DCFR, which as a general rule provide that an obligation must be performed even if performance has become more onerous, whether due to increased costs of performance or a diminution in the value of the performance received by a party.⁹⁴ However, in the event of hardship⁹⁵ or a change of circumstances⁹⁶, provided that the events occurred after the conclusion of the contract, were unforeseeable, beyond the control of the disadvantaged party, and that the disadvantaged party did not assume the risk of such events, the disadvantaged party may request renegotiation. In the case of unsuccessful negotiations, the court may modify the contract in order to restore con-

⁹² See: *Code civil*, Art. 1195. For a more detailed discussion on the French theory of *imprévision*, see: Momberg Uribe, R.A., *The Effect of a Change of Circumstances on the Binding Force of Contracts: Comparative Perspectives*, Intersentia, Utrecht, 2011., pp. 43. – 68.; Kovac, M.; Poncibo, C., *Towards a Theory of Imprévision in the EU?*, European Review of Contract Law, Vol. 14, No. 4, 2018, pp. 350. – 356.; Ben Hamida, W., *L'imprévision et l'arbitrage après la réforme du droit des contrats en France*, ASA Bulletin, Vol. 39, No. 2, 2021, pp. 378. – 396.

⁹³ See: COA, Art. 369. – 372. For a more detailed discussion on the institute of modification or termination of contracts in Croatian law, see: Nikšić, S., *Temeljna obilježja instituta izmjene ili raskida ugovora zbog promijenjenih okolnosti*, in: Liber amicorum Nikola Gavella, Građansko pravo u razvoju, Pravni fakultet Sveučilišta u Zagrebu, 2007., pp. 563- 605; Petrić, S., *Izmjena ili raskid ugovora zbog promijenjenih okolnosti prema novom Zakonu o obveznim odnosima*, Zbornik Pravnog fakulteta Sveučilišta u Rijeci, Vol. 28, No. 1, 2007, pp. 1- 49; Klasiček D.; Ivatin M., *Modification or dissolution of contracts due to changed circumstances (clausula rebus sic stantibus)*, Pravni vjesnik, Vol. 34, No. 2, 2018, pp. 27. – 55.

⁹⁴ See: UNIDROIT Principles, Art. 6.2.1., PECL, Art. 6:111. para 1.DCFR, Art. III. – 1:110 para 1.

⁹⁵ According to the UNIDROIT Principles, which use the term “hardship” and define it in Article 6.2.2, hardship occurs when the occurrence of events fundamentally alters the equilibrium of the contract.

⁹⁶ In accordance with the PECL, which stipulates that a legally relevant change of circumstances occurs when the performance of the contract became excessively onerous, and the DCFR, which requires that the performance of a contractual obligation became so onerous that it would be manifestly unjust to hold the debtor to the obligation. See: PECL, Art. 6:111, para 1, and DCFR, Art. III.-1:110, para 1.

tractual equilibrium or may terminate it.⁹⁷ It follows that the conditions for the existence of hardship, in terms of the characteristics of the events that give rise to it, correspond to those required for an event to qualify as force majeure, with the difference that in the case of force majeure, performance of the contract becomes impossible, whereas in the case of hardship, performance is significantly more difficult – still possible, but accompanied by difficulties and costs that the obligor did not anticipate at the time of assuming the contractual obligation.⁹⁸ Accordingly, the impact of EU restrictive measures on a contract may constitute hardship (or change of circumstances) if their adoption renders performance excessively onerous for the obligor; this applies when the measure is adopted after the conclusion of the contract⁹⁹, is beyond the control of the affected party¹⁰⁰, was unforeseeable, and provided that the affected party has not assumed the risk of such an event. EU restrictive measures, particularly financial restrictions and SWIFT- related measures¹⁰¹, may directly affect the execution of international contracts by making payments between contracting parties significantly more difficult. In such cases, although performance remains possible, serious disruptions arise in the method of payment, there are increased transaction costs and the need for alternative financial arrangements, resulting in a disturbance of the economic equilibrium of the contract and constituting a typical example of hardship. Beyond the scope of EU restrictive measures, the COVID-19 pandemic should be mentioned as a global crisis that caused hardship in numerous contracts, where performance did not become impossible but was rendered exceptionally onerous; in such instances, particularly in the practice of German courts, it has often been recognized as a

⁹⁷ In the part related to the legal consequences of hardship, i.e., the change of circumstances, there are certain differences among the mentioned soft law instruments: The UNIDROIT Principles, in the case of hardship, authorize the affected party to request renegotiation, and if an agreement cannot be reached (which includes a situation where the other party refuses to negotiate), the court may modify or terminate the contract. According to the PECL, in the event of a change of circumstances, the parties are bound to enter into negotiations with a view to adapting the contract or terminating it. If no agreement is reached, the court may decide on the modification or termination of the contract. Finally, the DCFR requires that the debtor's attempt to negotiate a modification of the contract be fulfilled as a condition for the court to modify or terminate the contract. Compare UNIDROIT Principles, Art. 6.2.3, PECL, Art. 6:111, paras 2 and 3, and DCFR, Art. III.-1:110, paras 2 and 3.

⁹⁸ See: Kačer, H.; Radolović, A.; Slakoper, Z., *op. cit.*, note 40, pp. 371 – 372.

⁹⁹ It should be noted that the UNIDROIT Principles, in contrast to other soft law instruments and national regulations, recognize as a legally valid assumption of hardship the circumstance that events became known to the party after the conclusion of the contract. See: UNIDROIT Principles, Art. 6.2.2.

¹⁰⁰ See: *supra*, note 67.

¹⁰¹ As imposed by Council Regulation (EU) 2022/345 of 1 March 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine [2022] OJ L 63/1, Art. 1.

basis for hardship.¹⁰² The legal consequences of hardship caused by the imposition of EU restrictive measures vary depending on the applicable national law or supranational rules governing the contract.¹⁰³ However, it can generally be concluded that contemporary regulation of this doctrine favors contract adaptation over termination.¹⁰⁴ Certain national legal systems¹⁰⁵, as well as all previously mentioned supranational soft law instruments, primarily prescribe the obligation and right to renegotiate the contract in light of changed circumstances, reserving the court's power to modify or terminate the contract only in the event of unsuccessful negotiations. As a preventive measure against inconsistencies between national legal systems, ICC Clauses should also be noted; specifically, the ICC Hardship Clause which allows the parties to stipulate in advance the procedure to be followed in cases of disproportionate difficulty in performance due to external circumstances, such as, among others, EU restrictive measures.¹⁰⁶

6. EU RESTRICTIVE MEASURES AND GLOBAL CRISES AS EXTRAORDINARY CIRCUMSTANCES IN CASE LAW

Among the judicial decisions addressing the legal nature of sanctions, i.e. restrictive measures, and their impact on contractual relationships, particular attention should be given to the case law of the French Court of Cassation. In the well-known *Bank Sepah* case, the Court held that “the freezing of the assets of a person or entity targeted by such measures on account of its activities does not constitute force majeure for the affected party, due to the absence of the requirement of externality.” Accordingly, the Court established that a counterparty domiciled in Russia and targeted by restrictive measures cannot invoke force majeure, as the

¹⁰² See the decision of Bundesgerichtshof XII ZR 8/21 of 12 January 2022. For a review of the case law of German courts regarding the COVID-19 pandemic, see: *Rechtsprechung zur COVID-19-Pandemie*, Available at: [https://dejure.org/corona-pandemie?s=nach_Rechtsgebieten&rechtsgebiet=Prozessrecht], Accessed 23 March 2026.

¹⁰³ Indeed, according to the COA, it is permitted to request both the modification and termination of the contract, with such a request being made through a lawsuit in judicial proceedings. In French law, as well as when the UNIDROIT Principles, PECL, and DCFR apply to the contract, access to the court in this sense is not possible without prior negotiations, or an attempt to negotiate, regarding the content of the contract. In German law, the preferred consequence of the disruption of the basis of the contract is the mutual adjustment of the contract to the new circumstances, with judicial termination of the contract being possible only if modification is not possible or cannot be reasonably imposed on the other contracting party.

¹⁰⁴ As is the case in Croatian and German law. See *supra*, pp. 11-12.

¹⁰⁵ See: *Code civil*, Art. 1195.

¹⁰⁶ See *supra*, note 85.

requisite element of externality is lacking.¹⁰⁷ Significant judicial guidance may also be found in the case law of the courts of the United Kingdom.¹⁰⁸ In *Lamesa Investments Ltd v Cynergy Bank Ltd*, the Court of Appeal confirmed that the borrower was entitled to suspend the payment of interest instalments where making such payments could expose it to the risk of secondary sanctions under United States law. Thus, sanctions were recognised as a valid ground for the suspension of contractual performance.¹⁰⁹ A considerable body of case law concerning the legal nature of global crises as extraordinary and unforeseeable circumstances can be found in the decisions of national courts of EU Member States relating to the COVID-19 pandemic. In this regard, the jurisprudence of the German courts is particularly extensive. Reference should once again be made to the previously discussed judgment of the *Bundesgerichtshof* in case XII ZR 8/21, in which the Court held that measures adopted to combat the COVID-19 pandemic do not automatically constitute force majeure, but may amount to a *Störung der Geschäftsgrundlage* and thereby justify an adjustment of rent to reflect the changed circumstances.¹¹⁰ Similarly, in case No 5 U 1782/20 before the *Oberlandesgericht Dresden*, the Court, by judgment of 24 February 2021, reduced the amount of rent payable on the grounds that the textile retail store operating within the leased premises had been required to remain closed for a certain period of the lease as a result of measures imposed by the competent ministry to contain the COVID-19 pandemic.¹¹¹ In case No 2 U 138/21 before the *Oberlandesgericht Frankfurt am Main*, the Court adopted the position that even the indirect consequences of lockdown measures may constitute hardship and, as such, justify the adaptation of a contract.¹¹² A similar issue arose before the *Tribunal judiciaire d'Annecy* in proceedings concerning the suspension of rent payments due to the lessee's inability to use the leased premises as a result of lockdown measures. The lessee invoked force majeure in support of its claim for suspension of the obligation to pay rent. The Court, however, declined to classify pandemic-related lockdown measures as force majeure.¹¹³ Likewise, the Paris Judicial Court in judgment No. 20/04516 concluded

¹⁰⁷ See: Judgement of the Court of Cassation, Nos 18-18.542 and 18-21.8114 of 10 July 2020.

¹⁰⁸ Although the United Kingdom (hereinafter referred to as: the UK) formally withdrew from the European Union as part of the so-called Brexit process on 31 January 2020 at midnight Central European Time, the case law of UK courts is nevertheless considered in this analysis due to its relevance to the subject matter. Moreover, particular account is taken of the fact that the case referred to was brought before court during the period in which the UK was still a Member State of the European Union.

¹⁰⁹ See: *Lamesa Investments Ltd v Cynergy Bank Ltd* [2020] EWCA Civ 821 of 30 June 2020.

¹¹⁰ See: *supra*, note 102.

¹¹¹ See the judgement of *Oberlandesgericht Dresden* No. 5 U 1782/20 of 24 February 2021.

¹¹² See the judgment of the *Oberlandesgericht Frankfurt am Main* No. 2 U 138/21 of 18 February 2022.

¹¹³ See the decision of the *Tribunal judiciaire d'Annecy*, No. 20/00275 of 7 September 2020. Similar conclusions were reached by the Montpellier Judicial Court in judgement No. 20/30974 of 10 September

that measures adopted in response to the pandemic could not serve as a basis for complete release from contractual obligations. Nevertheless, the Court emphasised that contracts must be performed in good faith, which requires parties, in exceptional circumstances, to assess whether such circumstances necessitate an adaptation of the terms governing the performance of their respective obligations. This reasoning clearly reflects the doctrine of hardship.¹¹⁴ Croatian case law has similarly treated the COVID-19 pandemic and the measures adopted to contain it primarily as changed circumstances rendering contractual performance excessively onerous¹¹⁵, and only exceptionally as force majeure giving rise to complete impossibility of performance and thereby releasing the parties from their contractual obligations.¹¹⁶ Given the tendency of European courts to exclude the application of force majeure in cases involving contracts affected by restrictive measures, and particularly in disputes concerning the impact of extraordinary measures adopted in response to the COVID-19 pandemic, together with the fact that Croatian courts have generally characterised the pandemic as a case of changed circumstances, it appears likely that Croatian courts would adopt a similarly restrictive approach when assessing the legal nature of EU restrictive measures. Croatian courts, like the national courts of other European states, are guided primarily by the principle of *pacta sunt servanda* and by a preference for preserving contractual relationships wherever possible. Consequently, where contracts are affected by circumstances such as EU restrictive measures or the COVID-19 pandemic, courts will generally seek solutions through contractual adaptation, temporary suspension of performance, or modification of contractual obligations, resorting to the doctrine of force majeure and complete discharge from contractual obligations only in exceptional cases.

7. CONCLUSION

Although EU restrictive measures are primarily instruments of the Common Foreign and Security Policy, in practice they exert a significant impact on private law contracts, particularly in international trade, the energy sector, and financial transactions. This paper demonstrates how EU restrictive measures, in terms of their

2020 and Paris Judicial Court, Nos. 20/55901 and 20/53713 of 26 October 2020.

¹¹⁴ See the judgement of Paris Judicial Court No. 20/04516 of 10 July 2020.

¹¹⁵ See the judgment and decision of the High Commercial Court of the Republic of Croatia, No. Pž-123/2024-3, of 27 November 2024; the judgment of the same court, No. Pž-91/2024-3, of 7 May 2025; and the headnote of the High Commercial Court of the Republic of Croatia in case No. Pž-2973/2025-3, of 24 September 2025.

¹¹⁶ See also the decision of the Supreme Court of the Republic of Croatia, No. Rev-861/2024-2, of 3 September 2024.

impact on contractual relationships affected by them, may constitute grounds for the nullity of a contract, force majeure, or hardship. Moreover, the same restrictive measure may, in substance, be legally qualified as either one of the aforementioned legal institutes. Force majeure is generally associated with the objective impossibility of performing an obligation, whether factual or legal, whereas hardship refers to situations in which performance remains possible but becomes exceptionally difficult or economically disproportionate. Given that the foregoing demonstrates that the legal qualification of EU restrictive measures, in terms of their impact on private law contracts, largely depends on the court's interpretation, the aim of this paper has been to determine the principles and criteria that courts should apply when deciding whether, in a particular case, a contract should be declared null, whether performance has become impossible due to force majeure, or whether the rules on hardship, i.e. change of circumstances, should be applied. An analysis of national legal systems and soft law instruments governing the aforementioned doctrines indicates that contemporary contract law favors the preservation of contracts and their adaptation to new circumstances over the termination of contractual relationships. This approach is most clearly reflected in the regulation of hardship, where European civil law systems explicitly give priority to the modification of the contract, while termination is permitted only where a fair adaptation of the contract to the new circumstances is not possible.¹¹⁷ Even in the context of force majeure, which as a rule leads to the termination of contractual obligations, where the impossibility of performance, or the event constituting force majeure, is of a temporary nature, the obligation does not cease; rather, its performance is postponed for the duration of the event, i.e. the period of impossibility.¹¹⁸ The tendency to preserve contracts is most pronounced in European soft law instruments for the harmonization of private law, which, in the regulation of hardship, i.e. change of circumstances, establish as a fundamental rule that an obligation must be performed even if performance has become more onerous, while the subsequent rules on the possibility of modifying or terminating a contract due to hardship are framed as exceptions to this principal rule.¹¹⁹ Additionally, the provisions on hardship in the aforementioned legal instruments primarily grant the affected party, or impose an obligation on both parties, to initiate renegotiations, with any modification or termination of the contractual relationship occurring only in the event of unsuccessful negotiations. These legal instruments also provide for the

¹¹⁷ See *supra*, pp. 11 sq.

¹¹⁸ This is explicitly provided for in the French *Code civil* (*supra*, note 76.), while in practice comparable interpretations are applied to § 275 BGB and § 1447 ABGB. See Palandt, *Bürgerliches Gesetzbuch*, 71st ed., C.H. Beck, Munich, 2012, p. 354, and the judgment of the Austrian *Oberster Gerichtshof* No. 3 Ob 589/51 of 21 November 1951.

¹¹⁹ See: *supra*, p. 12.

aforementioned rule within the provisions on force majeure, according to which, in cases where the excusing impediment is only temporary, the excuse applies only for the duration of the impediment.¹²⁰ The principle of good faith and the principle of the duty to uphold contractual obligations (*pacta sunt servanda*) constitute fundamental principles of European civil law, ensuring that a contract remains binding on the parties and that contractual obligations are performed in good faith, in accordance with their content and accepted practice.¹²¹ The principle of good faith (*Treu und Glauben*) is particularly significant in German doctrine on changed circumstances, where it has served as the basis for recognizing the impact of altered circumstances on a contract and for adapting its content to new conditions.¹²² Given that the aforementioned principles require respect for the binding force of contracts and the performance of contractual obligations in good faith, in cases of changed circumstances and when determining the applicable law and the fate of the contract, they also oblige courts, wherever possible, to maintain contracts in force through a fair adaptation to the new circumstances. The foregoing argumentation can also be substantiated by relevant case law, particularly in analogy with case law developed in the context of the COVID-19 pandemic, as these cases have established relevant criteria for assessing the effects of extraordinary circumstances - particularly national and supranational measures and prohibitions - on contractual obligations. Jurisprudence in this regard has demonstrated a tendency to treat measures adopted in response to the COVID-19 pandemic as constituting hardship, favoring the preservation of contracts in force and their adaptation to new circumstances. This is clearly illustrated by German case law, in which the courts confirmed that state measures drastically altering economic circumstances typically do not render performance impossible but may constitute a disturbance of the contractual basis justifying contract adaptation.¹²³ This confirms that, in contemporary contract law, the principle *in favorem contractus* predominates, whereby contracts are generally preserved rather than terminated. While force majeure is applied more restrictively and only in cases of complete impossibility of performance, hardship serves as a more flexible instrument enabling

¹²⁰ See: *supra*, note 66.

¹²¹ See: *Code civil*, Art. 1103. and 1104., BGB, § 242, ABGB § 914, UNIDROIT Principles, Art. 1.3. and 1.7., PECL, Art. 1:102 and 1:201.

¹²² Rösler, H., *Hardship in German Codified Private Law – In Comparative Perspective to English, French and International Contract Law*, *op. cit.*, note 91, p. 488.

¹²³ See: *supra*, p. 14., but also for example the ruling of the Austrian *Oberster Gerichtshof* on October 21, 2021, which established that the restrictions on business operations imposed due to the COVID-19 pandemic, which made it impossible to use the leased premises, do not constitute force majeure justifying the termination of the contract. Instead, they lead to a temporary impossibility of performance, which justifies a reduction in rent based on § 1104 and § 1105 of the ABGB. See: *Oberster Gerichtshof* OGH 3 Ob 78/21y of 21 October 2021.

the adaptation of contracts to new circumstances, particularly in the context of regulatory interventions such as EU restrictive measures. In conclusion, it can be stated that, when deciding whether an EU restrictive measure constitutes, in terms of its impact on a contract, grounds for nullity, force majeure, or hardship, courts are required, based on the principles of good faith and *pacta sunt servanda*, favoring the *in favorem contractus* principle, to assess whether the contract can, in the given case, be maintained in force and, where possible, adapted to new circumstances through the postponement of performance or the equitable modification of contractual obligations. Only in cases where performance, or a fair adaptation, is absolutely impossible should the contractual relationship be terminated. In line with this, EU restrictive measures generally should not lead to the termination of contractual relationships; rather, they should primarily activate mechanisms of hardship and contract adaptation. Such an approach is fully consistent with the contemporary approach in contract law and judicial practice, which prioritizes the continuity and adjustment of contracts over their termination, while preserving the balance between legal certainty, fairness, and economic efficiency.

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