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Private Legal Relations in the Wake of a Geoeconomic Order

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11 The Private (International) Law of Economic Sanctions

Private Legal Relations in the Wake of a Geoeconomic Order

Klaas Eller ▪

1 Introduction: The age of sanctions and the geoeconomic reordering of global commerce

International trade and global supply chains have entered troubled waters. The COVID-19 pandemic, military conflicts, logistical bottlenecks, and not least the escalating climate crisis have placed unprecedented strain on established supplier relationships. The long-dominant paradigm of ever faster, leaner, and geographically extended supply chains, facilitated and reinforced by the post-war international trade order,[1] is increasingly being called into question. One major challenge to this model stems from the growing willingness of major trading powers and regulators to make explicit the geopolitical orientations embedded in their trade and economic policies.[2] In this emerging 'geoeconomic order',[3] international commerce is no longer governed primarily by commitments to market integration and the legal rules and institutions that sustain it.[4] Instead, trade (once again) becomes an explicit vehicle for wider industrial policies and a site of overt geopolitical struggle, reshaping and fragmenting the legal architecture of economic globalisation.[5]

This contribution to the liber for Aukje van Hoek focuses on one salient manifestation of this transformation: the rise of international economic sanctions. Sanctions

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1 IGLP Law and Global Production Working Group, 'The Role of Law in Global Value Chains' (2016) 4 *London Review of International Law* 57.

2 Giorgio Sacerdoti and Leonardo Borlini, 'Systemic Changes in the Politicization of the International Trade Relations and the Decline of the Multilateral Trading System' (2023) 24 *German Law Journal* 17.

3 Anthea Roberts, Henrique Choer Mores and Victor Ferguson, 'Toward a Geoeconomic Order in International Trade and Investment' (2019) 22 *Journal of International Economic Law* 655.

4 Martti Koskenniemi, 'The Laws That Rule Us' (July/August 2025) 154 *New Left Review*.

5 Thea Riofrancos, 'The Security-Sustainability Nexus: Lithium Onshoring in the Global North' (2023) 23 *Global Environmental Politics* 20; Ioannis Kampourakis, 'The market as an instrument of planning in sustainability capitalism' (2023) 2 *European Law Open* 511.

are currently imposed at unprecedented levels,[6] with little indication that this trend will abate. Alongside sanctions adopted to maintain collective security under the United Nations Charter,[7] states and groups of states with substantial foreign-policy leverage – including the United States, the European Union, China, Russia, and Canada – have increasingly resorted to unilateral or coordinated sanctions outside the UN system ('autonomous sanctions') as substitutes for, or complements to, other forms of international intervention. The EU currently has more than 30 active sanction regimes.[8] Prominent examples include the extensive sanctions regimes directed at Iran and Russia, aimed respectively at constraining nuclear proliferation and responding to territorial aggression, that have become durable features of the international and EU legal and economic order.

Despite their pervasiveness, economic sanctions are predominantly analysed through vertical, state-centred[9] or inter-state perspectives, with primary attention focused on their legality under public international law and their political legitimacy and effectiveness. Yet economic sanctions ultimately reverberate in private law: sanctions aim to influence states politically, but they do so by regulating the everyday economic dealings of private actors.[10] The legal force of sanctions materialises not in abstract norms addressed to states, but in the suspension and reconfiguration of private legal relationships, typically irrespective of the law that the parties may have selected to govern their relationship. Even though sanctions take effect through private law instruments and doctrines, eg when performance might result in breaches of sanctions law, sanction regimes are typically mute on the private law extension, both with regard to substantive and procedural effects. The concrete private law effects, in other words, do not flow automatically from sanctions regimes, but are actively shaped through legal interpretation and doctrinal development at the intersection of public and private law, often across multiple legal orders. Enforcing the sanctions' policy objectives may for instance stand in tension with private law's inherent vision of inter-party justice.[11] A growing body of pending court and arbitral proceedings attests to the range of unresolved issues.

This chapter argues that the interface between foreign policy, on the one hand, and international commerce, on the other, will constitute a central terrain of trans-

6 Erdal Yalcin et al, 'The Global Sanctions Data Base – Release 4: The Heterogeneous Effects of the Sanctions on Russia' (2025) 48 The World Economy 2003.

7 See Erika de Wet, Art. 41 paras 15 et seqq., in Bruno Simma et al (eds), *The Charter of the United Nations: A Commentary* (4th edn, OUP 2024).

8 See the EU Commission dashboard, <https://data.europa.eu/apps/eusanctionstracker/> accessed February 15 2026; Clara Portela, 'How the EU learned to love sanctions, European Council on Foreign Relations' (12 April 2016) <https://ecfr.eu/article/essay_how_the_eu_learned_to_love_sanctions/> accessed 15 February 2026.

9 See notoriously CJEU, Case C–402/05 P and C–415/05, P. Kadi and Al Barakaat International Foundation v. Council and Commission [2008] ECR I–6351.

10 See Richard Gordon, Michael Smyth and Tom Cornell, *Sanctions Law* (Hart 2019) 257-275.

11 For a paradigmatic account of private law as a distinct normative order oriented towards inter-party justice, not external regulatory objectives, see Ernest Weinrib, *The Idea of Private Law* (Harvard UP 1995) and Ernest Weinrib, *Reciprocal Freedom: Private Law and Public Right* (OUP 2022).

national private (international) law in the years ahead. The chapter examines how economic sanctions are translated into, mediated through, and reshaped by private law and private international law. It asks, more specifically, how private law doctrines and private international law techniques engage with the growing 'regime collision'[12] between the transnational legal order of commerce and the territorially rooted regime of national foreign policies, especially where the international legality of sanctions is contested or indeterminate. These questions are not only of utmost practical relevance, as businesses around the world scramble to react to a complex and fast-changing landscape of sanctions.[13] By testing the capacity of private (international) law to re-embed global commerce within regulatory frameworks, they also go to the core of the jubilee's scholarship. How does private international law, especially in the Savignian tradition of value-neutrality that animates the European approach to the field, engage with conflicting policies that challenge decisional harmony?[14]

After introducing dominant patterns and a brief typology of contemporary sanctions regimes, the chapter first demonstrates the extent to which sanctions implementation relies on private law infrastructures, despite the limited capacity of substantive private law doctrines to apprehend sanctions' policy dimension (2.). It then turns to the private international law dimension, analysing how sanctions enter legal reasoning through different conceptual categories such as the 'local data' approach and overriding mandatory provisions, and how private international law allows calibrating competing regulatory claims through structured assessments that increasingly draw on proportionality (3.). Finally, the chapter situates these developments within a broader account of transnational and European private (international) private law under conditions of geoeconomic contestation (4.).

2 Seeing sanctions through a private law lens

While no two sanction regimes are identical and existing nuances matter gravely in the concrete legal assessment, it is helpful to outline the basic building blocks that compose most sanction regimes. *Ratione materiae*, sanctions may impose export restrictions regarding specific goods or sectors, order the freezing of funds and assets, or prohibit availing funds, economic resources or making investments.[15] *Ratione temporis*, sanction regimes take effect from a specified date and may restrict the future performance of pre-existing contracts. The regimes themselves are designed as tem-

12 Andreas Fischer-Lescano and Gunther Teubner, 'Regime-Collisions: The Vain Search for Legal Unity in the Fragmentation of Global Law' (2004) 25 *Michigan Journal of International Law* 999.

13 See generally Kish Parella, 'International Law in the Boardroom' (2023) 108 *Cornell Law Review* 839.

14 See eg Aukje van Hoek, 'Managing legal diversity - new challenges for private international law' (2012) 30 *Nederlands Internationaal Privaatrecht* 362.

15 See on financial sanctions René Smits, 'Financial Sanctions: the Development of an EU Practice' in Chiara Zilioli, Régis Bismuth and Luc Thévenoz (eds), *International Sanctions: Monetary and Financial Law Perspectives* (Brill 2024) 72.

porary, to be lifted by way of expiration or if the political goals have been met. *Ratione personae* and *ratione loci*, sanctions growingly follow a 'smart' design, directed at specific individuals or sectors rather than countries as a whole.[16] An initial typological difference is that between 'primary' and 'secondary' sanctions.[17] Primary sanctions are measures by which states regulate the conduct of persons subject to its own jurisdiction (eg on the basis of nationality, incorporation, residence, or territorial presence) by prohibiting or conditioning specified transactions with a sanctioned target. Secondary sanctions, by contrast, are measures designed to reinforce primary sanctions by seeking to influence the conduct of third-country individuals or legal entities not otherwise subject to the sanctioning state's jurisdiction by attaching adverse legal or economic consequences to their engagement with a sanctioned target, typically by conditioning access to markets, financial systems, or public benefits. In essence, secondary sanctions force foreign individuals and entities to choose between access to the sanctioning state's market and financial system or engagement with the sanctioned state or designated persons. The legality of this latter category, where jurisdiction is asserted on the basis of the extraterritorial effects of foreign conduct, remains highly contested under contemporary customary international law.[18]

From a private law perspective, contemporary sanctions generate persistent frictions between their foreign policy impetus and internal doctrinal calibrations of private law. In contractual practice, this has led to a proliferation of sanctions compliance and liability clauses, anti-boycott clauses (designed to prevent participation in foreign boycott regimes), force majeure and regulatory reservation clauses, as well as enhanced information and disclosure requirements.[19] This risk- and information-based approach to contractual compliance draws on governance techniques familiar from other regulatory domains, including Green Deal–related due diligence and reporting obligations.[20]

Given that sanction regimes at least traditionally do not specify their private law effects,[21] the substantive compatibility between economic sanctions and pre-existing contractual obligations hinges upon general doctrines governing impediments to

16 Kerstin Schmalenbach, 'Unilaterale Wirtschaftssanktionen gegen ausländische Unternehmen' (2021) 76 *Juristenzeitung* 269.

17 Tom Ruys and Cedric Ryngaert, 'Secondary Sanctions: A Weapon out of Control?' (2020) British Yearbook of International Law.

18 Cedric Ryngaert, *Jurisdiction in International Law* (2nd edn, OUP 2015) 117-119.

19 See eg Deutsches Institut für Compliance, Arbeitskreis Exportkontrolle & Sanktionen, 'Sanktionslistenscreening in der Unternehmenspraxis' (3rd edn 2023) <https://www.dico-ev.de/wp-content/uploads/2024/08/L08_Sanktionslistenscreening_Neuaflage_Nov2023_WEB.pdf> accessed 15 February 2026.

20 See eg Fabrizio Cafaggi, 'Transnational Private Regulation of Environmental Sustainability through Commercial Contracts' (2024) 20 *European Review of Contract Law* 25; Klaas Hendrik Eller, 'The Information Architecture of Corporate Accountability: Inside Corporate Reporting Regimes in Global Value Chains' in Hila Shamir et al (eds) *Modern Slavery and the Governance of Global Value Chains* (CUP 2025) 41.

21 See however the inclusion in some recent sanction regimes of so-called 'no-liability clauses', providing that persons acting in good faith in compliance with sanctions shall not incur liability on that basis, eg Article 11 of Council Regulation (EU) No 833/2014.

performance, including force majeure, supervening illegality, frustration, and hardship.[22] Crucially, with regard to foreign sanctions, judicial reasoning operates on two analytically distinct planes. Courts may treat sanctions as legally relevant norms, scrutinising their validity, scope, and applicability; at the same time, they assess their concrete factual impact, examining whether performance is in practice prevented or rendered excessively onerous.[23] The private law qualification of sanctions thus reflects the structural tension between their normative status and their de facto operation as instruments of (legally institutionalised) economic pressure – two elements that private law has struggled to capture simultaneously. We will see that this tension manifests itself both at the level of substantive law and private international law, even if in slightly different doctrinal contours.[24]

Substantively, while much depends on the specific design and scope of the sanction regime in question, there is clear indication that courts are unwilling to treat sanctions as a free pass to obligors in the sense of an automatic release from contractual commitments.[25] For primary sanctions (which directly affect the legality of performance), this is illustrated by the reluctance eg of English courts to all too easily assume frustration of contractual obligations based on the supervening illegality through sanctions measures.[26] German courts have at times included a (rather rudimentary) analysis of the policy goals in their assessment.[27] The picture is different in the context of secondary sanctions, which do not render performance formally illegal, but attach adverse economic consequences to certain transactions. In such cases, performance may remain legally permissible but commercially unattractive. Courts must assess whether exposure to foreign secondary sanctions amounts to supervening illegality, frustration, or merely increased commercial risk. The prevailing tendency appears to be to distinguish between scenarios of legal impossibility and heightened regulatory or economic risk: where compliance with foreign secondary sanctions remains formally

22 Mercédeh Azeredo da Silveira, *Trade Sanctions and International Sales* (Wolters Kluwer 2014) Part III.

23 On this tension see Klaas Hendrik Eller, 'Zwischen Faktizität und Geltung: Kuwait Airways und das Boykottgesetz' (2019) *Myops* 32.

24 On private international law's role in regulatory conflicts, see Ralf Michaels, 'Towards a Private International Law for Regulatory Conflicts?' (2017) 59 *Japanese Yearbook of International Law* 175.

25 Mercédeh Azeredo da Silveira, 'Economic sanctions and contractual disputes between private operators' in Larissa van den Herik (ed), *Research Handbook on UN Sanctions and International Law* (Edward Elgar 2017) 330.

26 See the detailed case law analysis by Gordon, Smyth and Cornell (*supra* n 10) 248-251 and Marjorie Eeckhoudt, 'Resisting from the bench: An overview of French and UK courts jurisprudence on unilateral and extraterritorial sanctions' in Charlotte Beaucillon (ed), *Research Handbook on Unilateral and Extraterritorial Sanctions* (Edward Elgar 2021) 306.

27 See eg BGH, Judgement of 21 December 1960 – VIII ZR 1/60 = *BGHZ* 34, 169 ('Borax') and BGH, Judgement of 24 May 1962 – II ZR 199/60) = *Neue Juristische Wochenschrift* 1962, 1436 ('Borsäure'), both affirming an overlap of policy interests between the forum and the sanctioning state, while LG Hamburg, Judgement of 3 December 2014 – 401 HKO 7/14 = *Versicherungsrecht* 2015, 1024 rejected to include US-Iran sanctions as part of German public morals.

voluntary from the perspective of the governing law, this is not easily assumed as impediment to performance.[28]

From the perspective of substantive law, the central question then becomes whether the risk of sanctions exposure with regard to both primary and secondary sanctions has been contractually allocated, or ought to be implicitly borne by one party.[29] We have seen that the analysis of sanctions under substantive contract law doctrines, while able to reflect both the normative force and the practical coercive effects of sanctions, largely brackets the broader foreign policy context. This doctrinal containment contrasts with the approach of private international law, as the next section will demonstrate. In essence, private international law, in determining the reach and applicability of sanctions in the first place, more readily incorporates their policy rationale and the broader questions surrounding their legality into the legal analysis.

3 Making policy contexts legally legible: Private international law and the reach of sanctions

If substantive private law processes sanctions through the prism of contractual risk allocation, private international law addresses the prior question whether a sanctions regime enters the legal reasoning at all. Through this more structural outlook and its specific doctrines with their conceptual legacy, private international law is more attuned to rendering visible the policy contexts that surround sanctions.[30]

The least controversial scenario arises where the sanctions invoked emanate from the law of the *forum* itself. In such cases, courts are entitled (and bound) to apply their own sanctions law, irrespective of the *lex causae* governing the contract.[31] The *forum* state's foreign policy choices are upheld against the parties' choice of law.

28 Mercédeh Azeredo da Silveira and Cedric Ryngaert, 'The Impact of Extraterritorial and Secondary Sanctions on Contractual Obligations', in Tom Ruys, Cedric Ryngaert and Felipe Rodríguez Silvestre (eds), *The Cambridge Handbook of Secondary Sanctions and International Law* (CUP 2024) 362, 386 et seqq.

29 See for interpretations of sanctions clauses eg Mamancochet Mining Ltd v Aegis Managing Agency Ltd [2018] EWHC 2643 (Comm) (deciding that a standard sanctions clause is triggered only where payment would actually expose the insurer to sanctions, not where there is merely a risk or speculative possibility of adverse consequences); and more recently Lamesa Investments Ltd v Cynergy Bank Ltd [2020] EWCA Civ 821 (holding that, on its proper construction and in its commercial context, a clause excusing payment where this would breach a 'mandatory provision of law' could encompass exposure to US secondary sanctions, notwithstanding that payment was not unlawful under English law).

30 This potential has inspired attempts to mobilise the concepts and modes of thought of private international law for other legal, societal, and policy conflicts, see pioneering Rudolf Wiethölter, 'Begriffs- oder Interessenjurisprudenz - falsche Fronten im IPR und Wirtschaftsverfassungsrecht: Bemerkungen zur selbstgerechten Kollisionsnorm' in Alexander Lüderitz and Jochen Schröder (eds), *Internationales Privatrecht und Rechtsvergleichung im Ausgang des 20. Jahrhunderts: Bewahrung oder Wende? Festschrift für Gerhard Kegel* (Metzner 1977) 213 and Christian Joerges, Conflict and Transformation: Essays on European Law and Policy (Hart 2022).

31 Tamás Szabados, *Economic Sanctions in EU Private International Law* (Hart 2019) 36-37.

Within the European Union, this mechanism is reflected in Article 9(2) Rome I Regulation, which provides that overriding mandatory provisions of the forum apply regardless of the law otherwise applicable to the contract. EU sanctions regulations, by their design and purpose, operate as such overriding mandatory rules and therefore displace conflicting contractual obligations even where the contract is governed by foreign law.[32] The same structural priority becomes visible at the enforcement stage, as demonstrated by a German decision of 2025[33] to refuse, with reference to the public policy exception of Art. V(2)(b) of the New York Convention, to recognise and declare enforceable a Russian arbitral award whose enforcement would currently violate EU sanctions against Russia.

For sanctions that do not originate from the forum state, the picture becomes more complex. Under the traditional approach of private international law, foreign public laws were not applied as such but treated as facts (data),[34] relevant only insofar as they affected performance under the *lex causae*. Foreign sanctions could render performance impracticable, but they were not deemed to have independent normative authority. Meant to preserve the forum's sovereignty by avoiding direct enforcement of another state's regulatory policies, this approach comes with two important limitations in our context. First, it may facilitate regulatory arbitrage – already a defining feature of legal strategies along global value chains[35] – as corporate actors can strategically select governing laws that are likely to give no or minimal consideration to sanctions. Second, the local data theory was developed primarily in relation to administrative and managerial forms of regulation rather than explicitly geopolitical instruments.[36] Sanctions' geopolitical rationale and their structural impact risks being overlooked, as the local data theory in Lehmann's words 'turns a blind eye to the policies that are involved'[37] and ultimately adheres to the *inter partes* perspective between private actors.

As a competing approach, foreign sanctions may be treated as foreign legal norms if they pass the narrow gate of the doctrine of overriding mandatory provisions. While for long controversial in its theoretical foundations, its codification in Article 9 Rome I

32 Caroline Kleiner, 'L'application des 'sanctions économiques' adoptées par l'Union européenne contre la Russie à la suite de l'invasion de l'Ukraine: Élements de droit international privé' (2022) *Journal du droit international* 749, 761.

33 OLG Stuttgart, Order of 13 May 2025 – 1 Sch 3/24 = *Zeitschrift für Schiedsverfahren* (SchiedsVZ) 2025, 244. See similarly OLG Frankfurt, Order of 12 June 2025 – 26 Sch 12/24 = *Zeitschrift für Schiedsverfahren* (SchiedsVZ) 2025, 149.

34 On the foundations of this approach, see Albert Ehrenzweig, 'Local and Moral Data in the Conflict of Laws: Terra Incognita' (1966) 16 *Buffalo Law Review* 55.

35 Klaas Hendrik Eller, 'Private international law and the interlegality of global value chains due diligence' in Agnieszka Frackowiak-Adamska and Giesela Rühl (eds), *Private International Law and Global Crises* (Edward Elgar 2025), 292.

36 See Jürgen Basedow, 'Das amerikanische Pipeline-Embargo vor Gericht Niederlande: Pres. Rb. Den Haag 17. 9. 1982 (Fall Sensor)' (1983) 47 *The Rabel Journal of Comparative and International Private Law* 141, 156-157.

37 Matthias Lehmann, 'Regulation, global governance and private international law: squaring the triangle' (2020) 16 *Journal of Private International Law* 1.

Regulation (and, beforehand, in Art. 7 of the Rome Convention) has given the doctrine a more structured place within EU private international law.[38] Art. 9(1) Rome I Regulation defines overriding mandatory provisions as being 'regarded as crucial by a country for safeguarding its public interests'[39] – a definition which sanction regimes are typically deemed to fall under.[40] Within the limited space of this chapter, only two aspects from the rich debate surrounding this provision shall be singled out, since they underline both the conceptual appeal and limitations of dealing with sanctions via Art. 9 Rome I Regulation.

First, whereas Article 9(2) concerns overriding mandatory rules of the forum, Article 9(3) permits giving effect to non-forum overriding mandatory provisions only in a narrowly circumscribed situation: namely, where they are provisions of the state in which the contractual obligations are to be or have been performed, and only insofar as those provisions render performance unlawful. The application of such foreign provisions is subject to a judicial discretion which, as per Art. 9(3), requires courts to have regard to the 'nature and purpose' of the foreign rule and to the 'consequences of its application or non-application'. Importantly, these two sets of factors invite courts to consider foreign sanctions in *both* their legal and factual dimension, as well as engage *both* with their policy rationale and their implications for the contracting parties. Courts and scholarship have *de facto* developed this into a structured balancing exercise. The reference to the 'nature and purpose' of the foreign rule has been read to encompass considerations such as the international legality of, and motives underlying, the sanctions regime, as well as the compatibility of those motives with the interests of the forum, the EU and the wider international community.[41] In an era in which sanctions are deployed for increasingly diverse policy objectives, this offers a potentially meaningful filter – without requiring a full-blown, US-style governmental interest analysis. The requirement under Article 9(3) to consider the 'consequences of their application and non-application' directs attention to factors relating both to the states concerned and to the contracting parties. These include the risk and severity of penalties, the practical enforceability of the foreign sanctions, the existence of blocking statutes, and the potential implications for the recognition and enforcement of judgments.[42] These elements equip courts for a contextual and comparatively sober assessment of foreign sanctions that moves beyond the surface of geopolitical rhetoric.

Second, however, these potential strengths of Article 9(3) Rome I Regulation in dealing with sanctions operate only within a limited scope. This is so for two reasons: First, the 'place of performance' requirement will often not be satisfied in cases involving secondary sanctions which, by their very design, lack a nexus to the place

38 See Edward Rensmann, *Wirtschaftssanktionen und internationale Handelsschiedsverfahren* (Mohr Siebeck 2024) §§ 4-5 and Michael Hellner, 'Third Country Overriding Mandatory Rules in the Rome I Regulation: Old Wine in New Bottles?' (2009) 5 *Journal of Private International Law* 447.

39 Drawing on CJEU, Joined Cases C-369/96 and C-376/96 Arblade and Leloup [1999] ECR I-8453, para 30.

40 da Silveira and Ryngaert (*supra* n 28) 369.

41 See Szabados (*supra* note 31) 85-87.

42 See Szabados (*supra* note 31) 88-89.

where contractual obligations are performed.[43] Second, the CJEU held in *Nikiforidis*[44] that Article 9 Rome I represents an exhaustive framework governing the circumstances in which overriding mandatory provisions may be given effect as law. Foreign sanctions that do not fall within this framework cannot be applied as law under Article 9. Crucially, however, the Court drew an important distinction by stating that Article 9 does not prohibit taking overriding mandatory provisions of a state that does not meet the requirements of Article 9(3) 'into account, as a matter of fact' if this is permitted by a substantive rule of the *lex causae*.[45] This effectively opens the door to fact-sensitive doctrines of the *lex causae* and may in practice expand the terrain of local data theory, with its abovementioned limitations. Yet, given the often unsystematic and insufficiently policy-sensitive manner in which substantive doctrines capture the multiple dimensions of sanctions regimes, the structured considerations embedded in Article 9(3) – particularly the attention to policy rationales, consequences, and proportionality – should as much as possible inform the analysis when courts decide whether and how foreign sanctions are to be taken into account at the substantive level.

This argument is backed by the fact that a proportionality assessment following similar lines as Art. 9(3) Rome I Regulation appears to emerge as a general judicial technique of dealing with foreign sanctions. The CJEU has held in the recent Bank Melli Iran[46] case that the application of the EU Blocking Regulation 2271/96, which aims to neutralise the effects of secondary sanctions on and through European companies, may be subjected to a proportionality assessment pursuant to Art. 52(1) of the Charter of Fundamental Rights of the EU (CFREU). The Grand Chamber decision found that the annulment of a contractual termination effected in breach of Article 5 of the Blocking Regulation is not precluded by the freedom to conduct a business in Article 16 CFREU, provided that such annulment does not entail disproportionate effects for the EU operator concerned. The national court must weigh, on the one hand, the objectives of the Blocking Regulation and, on the other hand, the probability and magnitude of the economic losses the operator would incur if compelled to maintain the contractual relationship.[47] This 'constitutionalisation' allows a structured calibration of how sanctions and counter-measures translate into private relations, allowing to address elements that are insufficiently captured by substantive private law doctrines, while maintaining a high bar for any EU operator who argues being disproportionately affected.[48]

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43 See da Silveira and Ryngaert (*supra* n 28) 371 as well as Cour d'appel de Paris, Judgement of 25 February 2015, n° 12/23757.

44 CJEU, Case C-135/15 *Republik Griechenland v Grigorios Nikiforidis* (Grand Chamber, 18 October 2016) EU:C:2016:774.

45 ibid paras 51-52.

46 CJEU, Case C-124/20 Bank Melli Iran v Telekom Deutschland GmbH (Grand Chamber, 21 December 2021) EU:C:2021:1035.

47 Ibid paras 92-93.

48 Leonardo Borlini, 'Bank Melli Iran v. Telekom Deutschland GmbH' (2024) 118 *American Journal of International Law* 160, 166.

4 Outlook: Private (international) law under geoeconomic statecraft

In what is increasingly described as a geoeconomic era, sanctions form part of an expanding arsenal of unilateral regulatory and foreign policy tools. The traditional distinction between sanctions as a targeted instrument of foreign policy and broader means of economic pressure has become increasingly unstable, as each is deployed for strategic leverage. At the EU level, the recent adoption of the EU Anti-Coercion Instrument[49] may signal a move from prioritizing the protection of private operators under the EU Blocking Regulation ('shields') to a more assertive, EU-level response to external economic pressure ('swords').[50] These wider developments are part of what has been labelled as Europe's 'geopolitical awakening'.[51]

As this chapter has sought to illustrate, this awakening unfolds not outside, but through, transnational and European private (international) law. The turn to economic sanctions unsettles the familiar imaginary of an amorphous transnational legal space dominated by the private ordering of commerce. Just like the jubilee's work has shown on many occasions with regard to transnational labour law,[52] sanctions operate as a reminder that the 'transnational lift-off'[53] is not a given but enabled by distinct legal infrastructures and design choices at different scales. Instead of treating sanctions as sporadic domestic policy disruptions of an otherwise self-sustaining realm of 'free' trade, they stress the extent to which transnational private ordering remains embedded within state-based authority and regulatory frameworks.[54] AG Hogan in his Opinion in the Bank Melli Iran case has emphasised the conditioned nature of freedom of contract with high conceptual clarity.[55]

Against this backdrop, the legal modes of giving effect to (foreign) economic sanctions between private parties are practically relevant and conceptually illustrative. There are two principal pathways: sanctions may be processed through substantive private law doctrines, or brought to bear via the private international law category of overriding mandatory provisions. The analysis has shown that private international

49 Regulation (EU) 2023/2675 of the European Parliament and of the Council of 22 November 2023 on the protection of the Union and its Member States from economic coercion by third countries.

50 Tamás Szabados, 'Building Castles in the Air? The EU Blocking Regulation and the Protection of the Interests of Private Parties' (2023) 25 *Cambridge Yearbook of European Legal Studies* 64.

51 Alluding to Luuk van Middelaar, 'Europe's Geopolitical Awakening' (2021) 8 *Groupe d'études géopolitiques*, <https://geopolitique.eu/en/2021/04/15/europes-geopolitical-awakening/> accessed 15 February 2026. See also Hannah Buxbaum, 'The New Unilaterialism in EU Cross-Border Regulation: Objectives, Methods, Institutions' (2025) 89 *The Rabel Journal of Comparative and International Private Law* 411.

52 See eg Aukje van Hoek, 'Re-embedding the transnational employment relationship: A tale about the limitations of (EU) law?' (2018) 55 *Common Market Law Review* 449.

53 Robert Wai, 'Transnational Liftoff and Juridical Touchdown: The Regulatory Function of Private International Law in an Era of Globalization' (2002) 40 *Columbia Journal of Transnational Law* 209.

54 Anne Orford, 'Theorizing Free Trade' in Anne Orford and Florian Hoffmann (eds), *The Oxford Handbook on the Theory of International Law* (OUP 2016) 701.

55 Opinion of AG Hogan in Case C-124/20 Bank Melli Iran v Telekom Deutschland GmbH (12 May 2021) EU:C:2021:386, para 127.

law's conceptual toolkit enables a more explicit engagement with sanctions in their legal and policy context, and that these strengths may fruitfully inform substantive reasoning as well.

It would be promising if this development were to lead to a gradual 'constitutionalisation' of sanctions' effects in both private and private international law. Earlier instances of constitutionalisation in private law have lifted legal analysis beyond a purely *inter partes* framing and enabled a more holistic assessment capable of overcoming the blind spots of individual doctrines.[56] Refining private (international) law – within the EU and transnationally – so that the field can render policy contexts visible and place private autonomy within an increasingly strategic economic environment will be a central legal endeavour in the years ahead.

56 See Dan Wielsch, 'The Function of Fundamental Rights in EU Private Law – Perspectives for the Common European Sales Law' (2014) 10 *European Review of Contract Law* 365.