

THE UNCERTAIN CONTOURS OF MEMBER STATES' OBLIGATION TO ENSURE THAT EU RESTRICTIVE MEASURES ARE NOT CIRCUMVENTED

Francesca FINELLI

1. Introduction	225
2. The Anti-Circumvention Clause in EU Restrictive Measures	227
3. Uncovering and Countering Circumvention at the National Level.	229
4. Uncovering and Countering Circumvention at the EU Level	232
5. Circumvention as a New 'Euro-Crime'	238
6. Conclusions	244

1. INTRODUCTION

EU restrictive measures rely on a *decentralized* enforcement system,¹ where member States are primarily responsible for ensuring compliance with EU provisions within their domestic jurisdictions. National authorities shall, indeed, monitor, investigate and ultimately impose penalties for infringements of restrictive measures, including for activities which have the aim, or result, of circumventing those measures.²

Pursuant to Art. 24(3) of the Treaty on European Union (TEU), member States 'shall support the Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity and shall comply with

¹ Differently from their fully *centralized* decision-making process, which takes place in Brussels within the Council – supported by its subcommittees and working parties, the European External Action Service (EEAS) and the European Commission.

² In this field, the Union cannot *directly* monitor, investigate and punish non-compliance with EU restrictive measures *vis-à-vis* EU companies and citizens. The Union – more precisely the European Commission – can only monitor, *indirectly*, the transposition and application of EU provisions at the national level and, where necessary, it can initiate infringement procedures against member States.