

ARTICLE

3 QUESTIONS FOR ALINA NEDEA, HEAD OF SANCTION UNIT, DG FISMA EUROPEAN COMMISSION

European Law | 27/04/23 |

What's the point of EU sanctions? How do they come about?

Sanctions are an essential tool in the EU's common foreign and security policy (CFSP), through which it can intervene where necessary to prevent conflict or respond to current or emerging crises. Although they are called 'sanctions', EU restrictive measures do not seek to punish anyone, but to bring about a change in bad or harmful policies or activities by targeting the non-EU countries, including organisations and individuals, responsible.

Sanctions are adopted by the Council of the European Union, acting by unanimity. That means all Member States must agree to their adoption, amendment or lifting, with no exception. Remember this the next time you hear "Brussels has imposed sanctions". The proposals for sanctions Decisions, which bind national authorities, are made by the High Representative of the Union for Foreign Affairs and Security Policy. The European Commission, together with the High Representative, make joint proposals for the associated Council Regulation, which is the one creating obligations on private operators: companies, banks, but also individuals like you and me.

Many ideas for new sanctions, or for amendments, come from discussions with industry stakeholders. We listen to their input on existing measures intently. It is important to react quickly to on-the-ground experience, as we want to avoid/mitigate unintended consequences.

EU sanctions are not a blunt instrument. We are careful to make them targeted and proportionate to the objectives they seek to achieve. As such, they are aimed at those responsible for the policies or actions the EU wants to influence, while reducing as much as possible any unintended consequences. As they are a foreign policy tool, EU sanctions inherently produce effects in non-EU countries – however, they only apply within EU jurisdiction. In other words, the obligations imposed are binding on EU nationals or people located in the EU or doing business here. This is why we say that EU sanctions are not extra-territorial.

When the EU imposes sanctions, something I really want to stress, we do not look, ever, to "punish" civilian populations. For example, we do not target medical exports. Also, EU sanctions do not target trade in agricultural products. By way of example, export of agricultural equipment from the EU to Russia is not restricted; restrictions apply to dual-use items and goods which could contribute, for instance, to the enhancement of Russian military capacities. We want to stop the war that Russia has started, we do not seek to leave ordinary Russians without medicines produced in the EU.


EU sanctions are scalable to respond to the situation on the ground. We constantly look at the measures in place, assessing how they are applied and detecting any potential loopholes. This is also crucial for limiting violation and circumvention attempts to the extent possible.

2. How does EU sanctions implementation work?

It is the Member States who are responsible for implementation and enforcement of sanctions. but as guardian of the treaties, the European Commission plays a vital role in overseeing sanctions uniform implementation and enforcement by the Member States. In this capacity, the Commission works closely with the Member States to support them on implementation, provide information to stakeholders, and engage in dialogue to collect feedback on how sanctions are implemented and enforced.

The EU coordinates its sanctions with major international allies and partners, and also cooperates with them on implementation and enforcement. For example, regarding Russia sanctions, we are closely coordinating with allies such as the United States, the United Kingdom, South Korea, Switzerland, Japan, Australia, Canada, New Zealand and Norway, so that each country uses the most effective measures based on its legal system or economy.

Coming back to our work within the EU, we have a regular expert group on sanctions through which the Commission works with all Member State authorities for sanctions. Specific to Russia sanctions, in March 2022 the Commission set up the "Freeze and Seize" Task Force to ensure better coordination of asset freezes against Russian and Belarusian individuals and entities. The Task Force explores possible seizure and confiscation of such assets in case of the links between assets belonging to persons listed under EU sanctions and criminal activities. In the context of the Task Force, the Commission has also established an expert group focused on asset freezes and reporting, which explores ways to identify assets that must be frozen.



You may think that all these expert groups and task forces are just bureaucratic formalities, but I assure you they are not. We get detailed. We look into problems reported by industry, into diverging interpretations by national authorities, into thorny issues in general. And we try to find solutions. The Commission has published guidance and extensive FAQs (over 500), which are regularly updated, covering a broad range of topics, to guide stakeholders on how to apply the sanctions packages. The Commission also publishes easily accessible information on the packages adopted so far. The EU Sanctions Map provides a user-friendly display of all sanctions regimes currently in place, including persons subject to individual sanctions. The Consolidated Financial Sanctions List, which includes everyone who is subject to an EU asset freeze and the prohibition to make funds and economic resources available, is available online.

We keep creating tools to help make sanctions more effective. The Commission has put in place a Whistleblower Tool to report sanctions violations anonymously. So successful it is, that it was even targeted by Russian hackers! We have also established the EU-level contact point for humanitarian aid, which provides practical information to humanitarian operators on requesting derogations.

Experience leads us to legal reforms too. In December 2022, we proposed to harmonise criminal offences and penalties for the violation of EU sanctions. It is paramount that the violation EU sanctions does not pay off. The Commission proposal sets out common EU rules, which will make it easier to investigate, prosecute and punish violations of sanctions in all Member States alike.

Then in May 2022, we also proposed a new Directive on Asset Recovery and Confiscation. It contains a new comprehensive set of rules that addresses asset recovery from beginning to end - from tracing and identification, through freezing and management, to confiscation and final disposal of assets. In particular, the proposal sets out a new confiscation framework to ensure that criminals are deprived of their illegal assets.

In recent weeks and months, Member States are finalising the first enforcement cases for violations of the sanctions adopted in 2022. The Commission is gathering information on their conclusions and the possible lessons learned. In parallel, we continue to monitor how Member States deal more broadly with possible violations and circumvention of EU sanctions, to ensure that all those responsible are held accountable. We cooperate with Member States' judiciaries, to facilitate in particular the pursuit of criminal cases.

The Commission has also mobilised its trade and customs services to spot the redirection of trade flows from certain third countries acting as possible gateways of our products to Russia. Outreach to the countries in question is underway to reach a shared assessment, compare data and discuss remedial measures.

In parallel, the Commission gathers from the private sector information on circumvention patterns, as well as recommendations on how to better prevent this phenomenon. And then the cycle restarts: new sanctions proposals, new discussions with experts, other FAQs, etc. It's never quiet in our line of work.

3. Okay, so what is everyone expected to do to comply with sanctions?

Sanctions impose an obligation of result, which means that the persons required to comply with EU sanctions must ensure that the results set in EU sanctions legislation are achieved. Unlike other EU legislation, like for instance the anti-money laundering Directive, EU sanctions do not set out minimum requirements or specific due diligence for compliance. It is for the economic operator to do the risk assessment and take a decision on risk management (i.e. whether to proceed with a transaction and what risk mitigation measures to adopt).

To get into a little more detail, the usual methods of due diligence are: screening of listed persons; verification of beneficial ownership register; companies registry checks; information gathering from business counterparts; contractual arrangements to be included in the agreements with business partners; and adverse media investigations.
