

CLIENT ALERT

# EU Sanctions: The New Strategy Set by the EU Commission

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## AUTHORS

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### 1. Economic and Financial Sanctions and Their Central Role Within the EU Commission Strategy

The European Union Commission (the “Commission”) published on 20 January 2021 its new strategy to stimulate the openness, strength and resilience of the EU’s economic and financial system, with the final aim to better enable Europe to play “a leading role in global economic governance, while protecting the EU from unfair and abusive practices”.

The Commission considers economic and financial sanctions a key area of its strategy which expressly sets two main goals: (i) promoting the uniform implementation and enforcement of the EU international sanctions and (ii) countering the extra-territorial effects of sanctions of other countries. The Commission therefore plans to take action on two fronts:

- First, to further strengthen the enforcement of EU sanctions as a tool to pursue its Common Foreign and Security Policy, providing for more uniformity and effectiveness.
- Second, to reduce the negative impact of extra-territorial sanctions, considering that, according to the Commission, US sanctions with extra-territorial effect “seriously affected the EU’s ... ability to advance foreign policy objectives, to honor international agreements and to manage bilateral relations with sanctioned countries”.

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Below we summarize the main steps announced by the Commission in the economic and financial sanctions area.

### 2. EU Sanctions Enforcement: the Measures Announced by the Commission

**Improvement of the Effectiveness of EU Sanctions** – From 2021, the Commission will perform an assessment of the effectiveness of EU sanctions, examining the impact of sanctions on the EU operators, on trade patterns between the EU and the country concerned, on EU businesses and on the provision of humanitarian aid. The Commission will then coordinate with the High Representative to propose improvements. It will also conduct a review of measures that are used to circumvent sanctions, including cryptocurrencies and stablecoins, and it will propose legislative measures or guidelines from 2022.

**Creation of a Database on Sanctions Enforcement** – In 2021, the Commission will develop a database, the Sanctions Information Exchange Repository, to enable prompt reporting and the exchange of information between Member States and the Commission on the implementation and enforcement of sanctions.

**Creation of a Single Contact Point for Sanctions Enforcement** – In 2021, the Commission will work with Member States to establish a single contact point for enforcement and implementation issues which have a cross-border dimension. The current lack of centralization enables organizations operating in multiple Member States to forum shop and circumvent sanctions.

**Further Actions to Prevent Sanctions Evasions** – The Commission will continue to further ensure that EU funds and economic resources that are made available to third countries, international organizations and international financial institutions are not used for any purpose which contravenes EU sanctions.

**Creation of a Reporting System of Sanctions Evasions** – The Commission will establish a dedicated system to provide for the anonymous reporting of any sanctions evasion (including whistleblowing), to address the confidential nature of information on violations of sanctions and potential implications for those who report illicit activities.

**A Road Map to Address Systematic Noncompliance** – In the first half of 2022, the Commission will design a roadmap to move from the detection of systematic noncompliance with EU sanctions to action against such noncompliance before the EU Court of Justice.

**Review of the Penalties Set by Member States** – The Commission will work with Member States to ensure that national penalties for breaching EU sanctions are effective, proportionate and dissuasive.

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### 3. The Measures Planned to Counter Extra-Territorial Sanctions

**Further Coordination With G-7 Partners** – The Commission will coordinate with allies and like-minded partners, in particular G-7 partners, to align sanctions regimes to the greatest possible extent. The Commission clarifies that “regular dialogue and cooperation” will be pursued to better align decisions and to raise potential concerns regarding the extra-territorial application of third countries’ sanctions.

**Improved Use of the Blocking Statute** – The Commission will put in place measures to make better use of the Blocking Statute (Council Regulation (EC) No 2271/96), which is the EU’s unified response to the extra-territorial application of third countries’ measures, in particular US secondary sanctions, on EU operators. The Commission will implement the following actions.

- Clearer procedures and rules for applying Article 6 (in particular, to facilitate the recovery of defendants’ assets across the EU).
- Strengthened national measures to block the recognition and enforcement of foreign decisions and judgments based on the listed extra-territorial measures (Article 4).
- Streamlined processing for authorization requests, including a review of the information requested (Article 5, second paragraph).
- Possible involvement of the Commission in foreign proceedings to support EU companies and individuals.

**Extra-Territorial Sanctions and Foreign Direct Investment Screening** – When assessing the impact of foreign direct investments in the EU on security and public order, the Commission will consider the likelihood that the transaction results in the unlawful extra-territorial application of sanctions adopted by any third country to the EU target (e.g., when reviewing the acquisition of control over EU companies by a foreign investor, the Commission may need to assess, in cooperation with Member States’ national authorities, whether this would render the EU target company more prone to abide by such extra-territorial sanctions, regardless of the country that imposed them).

**Additional Measures to Counter the Effects of Extra-Territorial Sanctions** - The Commission will launch a general reflection on policy options to modernize the EU’s toolkit to counter the effects of the unlawful extra-territorial application of third-country unilateral sanctions to EU individuals and entities. The Commission is currently carrying out a review of its trade policy and will bring forward a proposal to deter and counteract coercive actions by third countries no later than the fourth quarter of 2021 (or earlier should the need arise). Further initiatives will be undertaken as follows.

- The Commission will engage with financial-market infrastructure companies to carry out a thorough analysis of their vulnerabilities as regards the unlawful extra-territorial application of unilateral sanctions by third

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countries. The Commission will then assess the need for issuing related recommendations and contribute to the EU range of tools to prevent and effectively counter the undue interference with EU-based financial market infrastructures.

- The Commission will establish a working group to assess possible technical issues relating to the transfer of financial contracts denominated in euro or other EU currencies cleared outside the EU to central counterparties located in the EU.
- The Commission will mandate the European Banking Authority to do a study on EU dependence on non-EU financial operators and on banks' dependence on funding in foreign currencies in 2021.
- The Commission will explore, in close coordination with the EEAS (European External Action Service) options to ensure the uninterrupted and secure flow of essential financial services between the EU and its trading partners and to shield the legitimate operations of EU operators. The Commission will also explore the opportunity to increase the effectiveness of instruments such as INSTEX (the special purpose vehicle to facilitate payments for legitimate trade between the EU and Iran; see our recent articles on this topic [here](#) and [here](#)).

#### 4. Final Remarks

The strategy set by the Commission is articulated and implies the involvement of EU institutions as well as of the relevant stakeholders, including financial institutions and companies that often find themselves caught in the crossfire of US sanctions and conflicting EU measures, including the Blocking Statute.

Until completion of this process, EU operators must continue to navigate the complexities and conflicting rules of US, EU and UK economic and financial sanctions. Hopefully, once the proposed changes are in place they will provide a more uniform application of EU sanctions and more efficient management of cross-border cases, thanks to the creation of a single point of contact and the Sanctions Information Exchange Repository. This will correct the current inconsistencies and fragmentation due to the different implementation measures, interpretations and approaches adopted by Member States.

EU operators will therefore need to carefully monitor the implementation of the strategy set by the Commission while at the same time charting the possible developments of the US sanctions policy under the recently inaugurated Biden administration as well as developments in the UK's new, post-Brexit, autonomous sanctions regime.

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If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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