

CLIENT ALERT

Toothless Tiger No More? Germany Strengthens Sanctions and AML Enforcement

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AUTHORS

Dr. Richard Roeder | **Matthias Schrader** | **Dr. Johannes Schmidt** | **Dr. Maximilian Schlutz**
Dr. Marc Dietrich

Due to the perceived lack of uniform enforcement of the European Union's ("EU") various sanctions packages against the Russian Federation, the EU and its Member States have picked up pace in strengthening enforcement of EU sanctions. As part of this effort, Germany enacted a pair of acts aimed at supporting and increasing sanctions enforcement.

This development in German sanctions enforcement and measures against financial crimes in Germany is part of the EU-wide effort and must be seen against this background. The EU, EU Member States, Europol, Eurojust, and Frontex recently launched Operation OSCAR to improve financial investigations by EU Member States into assets held in violation or circumvention of EU sanctions in connection with Russia's invasion of Ukraine. Moreover, the EU Commission has taken action to improve the current sanctions enforcement patchwork among the EU Member States by pushing for harmonization of penalties for sanctions violations in all EU Member States via an EU directive. This EU directive will not be directly applicable in the various EU Member States, but requires the EU Member States to implement the directive's minimum standards into their respective domestic laws. You can find more information on this topic on the Willkie Compliance Concourse.

EU (Financial) Sanctions Enforcement in Germany

For years, financial institutions—under the threat of penalties and under the supervision of, *inter alia*, the German Federal Bank (*Bundesbank*)—have played a major role in EU (financial) sanctions enforcement in Germany. In light of the unprecedented scope of EU (financial) sanctions on Russian nationals and entities, it became clear that this type of

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enforcement was not enough. The authorities lacked the tools and legal means to effectively investigate assets of sanctioned persons and seize those assets when and where necessary. Public awareness of this lack of enforcement powers became apparent in press reports about Russian individuals subject to EU sanctions that still had yachts, supercars, and other luxury goods in Germany.

The new Sanctions Enforcement Acts aim to change this and provide the authorities with the necessary tools to prevent sanctions violations.

Sanctions Enforcement Act I

The Sanctions Enforcement Act I (*Sanktionsdurchsetzungsgesetz I*, “**SEA I**”) entered into force in May 2022. The SEA I was intended as a “*quick fix*” and aimed at enhancing cooperation and information sharing among the various German enforcement agencies, and—most importantly—for the first time, provided a specific legal basis for investigating and seizing funds and assets of persons and legal entities listed as targets of EU (financial) sanctions.

The SEA I created a legal basis allowing German enforcement agencies to cooperate more effectively, most notably, by increasing their abilities to share and obtain relevant data. The measures contained in the SEA I were intended to provide quick improvements for German agencies tasked with implementing EU sanctions against Russian nationals and entities. Among the investigative powers created by SEA I are the ability to summon and interview witnesses, seize documents and other evidence, and search homes and businesses to investigate sanctions violations and locate assets belonging to sanctioned persons and entities.

Sanctions Enforcement Act II

On December 19, 2022, Germany followed up the SEA I with the Sanctions Enforcement Act II (*Sanktionsdurchsetzungsgesetz II*, “**SEA II**”) which further improves the authorities’ tool kit. While the sanctions against the Russian Federation and Belarus were the initial trigger for the German Sanctions Enforcement Acts, they equally apply to the enforcement of all other EU sanctions in Germany.

The SEA II seeks to prevent delays in the enforcement of UN sanctions in Germany. Germany applies UN sanctions based on their implementation by the EU instead of unilaterally adopting sanctions against states or persons. This can lead to delays in the enforcement of UN sanctions in Germany, as the incorporation of UN sanctions into the EU sanctions regime may take some time. To cover this lag, the SEA II declares UN sanctions directly enforceable in Germany from the time of their official publication and limited to a temporary period of up to five days.

The SEA II creates the Central Office for Sanctions Enforcement (*Zentralstelle für Sanktionsdurchsetzung*, “**ZfS**”). This federal agency now has the primary responsibility for the investigation of funds and assets of sanctioned persons and

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targeted entities. The ZfS is granted access to the German land register and other public registers. It can now also easily freeze assets of sanctioned persons and entities.

The threshold for taking investigative measures is low. The ZfS may request information and documents from companies and administrative agencies, and interrogate persons if there are facts supporting the expectation that these actions might lead to helpful information for locating funds and assets targeted by financial sanctions. The same low threshold applies for entering business premises during regular business hours, or requesting information from various public registers. However, in order to search business premises and private apartments or houses, a court-issued warrant is required. It remains to be seen how these thresholds will be applied in practice, and how strictly they will be interpreted by administrative agencies and courts.

Similarly, the threshold for seizing assets and funds is low. It is sufficient that funds or assets are owned by sanctioned persons. If this requirement is fulfilled, the ZfS can seize these funds or assets to prevent these funds or assets from being used or disposed of in violation of EU sanctions. If it is unclear whether funds or assets are owned by a sanctioned person or entity, the ZfS may seize these funds or assets for the duration of the ownership investigation but no longer than 12 months. The only requirement for such seizure is that there are facts supporting the assumption that the assets or funds are covered by EU sanctions.

Sanctioned persons and entities are under an obligation to report any funds or assets in Germany. A violation of this reporting obligation may be penalized by a fine or prison sentence of up to one year. Because of the efforts to harmonize the penalties for sanctions violations in all EU Member States, it is likely that these penalties will increase further.

The ZfS is also the central authority to which potential whistleblowers can turn to, providing them with certain whistleblower protections.

In addition, the ZfS maintains a public register of sanctioned persons and entities, providing information on the legal status of their assets. A non-public version of the register also contains information about potential assets of sanctioned persons that can be accessed by public authorities.

Anti-Money Laundering and Transparency Measures

A second pillar of the SEA II concerns specific measures directed at preventing money laundering through real estate transactions.

Among these rules is a ban on cash payments as well as payments via crypto currency and raw materials for real estate in Germany. From April 1, 2023 onwards, purchase contracts for German real estate and share purchasing contracts for companies directly or indirectly owning German real estate must ensure that the purchase price is not paid in cash, crypto currency, gold, platinum, or gemstones. The parties to such contracts have to provide sufficient proof to the German

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notary that the purchase price is paid using permissible means. Moreover, the procedure for applying to the land registry in case of sale of real property has been changed so that the application can only be made by a notary, and the notary has to check beforehand whether there is sufficient proof that not prohibited means of payment were used. The parties may prove this by providing payment confirmations from their respective banks.

Furthermore, under the SEA II, entries in the German Transparency Register will now also contain information on real property that the listed entity owns in Germany. The Transparency Register was created to increase transparency of companies doing business in Germany and thereby make it more difficult to launder money or obscure money streams, including by listing the entities' ultimate beneficial owners. Pursuant to the SEA II, the respective land registry offices (*Grundbuchämter*) will share the required information on real estate holdings with the Transparency Register.

Conclusion & Takeaways

As of December 16, 2022, the EU Commission reported that EU Member States had frozen EUR 18.9 billion in assets as a consequence of EU Russia sanctions. The newly introduced measures are further steps towards a comprehensive and effective sanctions and AML enforcement regime in Germany. It remains to be seen, and next year's EU Commission figures might show, how successful these new measures will be in practice and whether the low thresholds for taking these actions, in particular with respect to third parties, are constitutional.

The new laws demonstrate that sanctions enforcement has become a top priority in Germany. Private and business entities should continuously monitor new developments of sanctions enforcement in Germany and on the EU level. Moreover, the new sanctions register—once up and running—should be used to ensure that there are no accidental transactions involving assets of sanctioned persons or entities.

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Your Willkie Global Trade & Investment and Litigation Teams will be happy to provide you with further advice on these issues.

Dr. Richard Roeder

+49 69 7930 2364

rroeder@willkie.com

Matthias Schrader

+49 69 7930 2244

mschrader@willkie.com

Dr. Johannes Schmidt

+49 69 7930 2245

jschmidt@willkie.com

Dr. Maximilian Schlutz

+49 69 7930 2382

mschlutz@willkie.com

Dr. Marc Dietrich

+49 69 7930 2128

mdietrich@willkie.com

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