

CLIENT ALERT

# Five Rounds of EU Sanctions Against Russia – A Basic Guide for German Companies

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In response to Russia's invasion of Ukraine, the EU has imposed broad sanctions against Russian individuals, companies and organizations in recent weeks. The most recent fifth sanctions package, adopted on April 8, 2022,<sup>1</sup> includes import bans on coal, wood and fertilizers, among other things, as well as further export bans. In addition, financial sanctions were extended, in particular the freezing of assets of four more Russian banks (VTB, Novikombank, Sovcombank and Otkritie Bank). The provision of trust services to Russian nationals and companies is prohibited, as is the provision of crypto services (e.g., holding bitcoins). Additional restrictions in the transport sector have been adopted in the form of a ban on business for Russian and Belarusian road transportation companies as well as a ban on all vessels registered under the flag of Russia entering EU ports. Russian companies are prohibited from participating in public procurement in the EU.

Below, we will explain the mechanics of the sanctions as well as their effects on German companies. We will give a short overview of the imposed sanctions and highlight the most important points when complying with these sanctions.

## Scope of Application

EU sanctions apply directly to every company and every individual within the EU. Implementing acts such as national legislation or administrative measures are not necessary. The sanctions must also be observed by EU citizens even if they are located in a non-EU country (e.g., employees posted to subsidiaries in China). The same applies to entities

<sup>1</sup> Available [here](#).

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established or registered under the law of a member state and operating in a non-EU country. Non-EU companies fall within the scope of the sanctions regulations only with regard to business conducted in the EU.

### Mechanics of Financial Sanctions

The EU has published a continuously supplemented list of individuals (e.g., Russian politicians, oligarchs and high-ranking military personnel) and entities that are subject to so-called financial sanctions. These financial sanctions aim to prevent sanctioned individuals and companies from accessing funds and other economic resources. Assets of the sanctioned individuals or companies are frozen (“asset freeze”). At the same time, it is prohibited to make available funds and other economic resources to them (“prohibition of provision”).

Financial sanctions are most effective in the financial sector where they directly affect payment transactions. As EU banks are no longer allowed to dispose of assets of sanctioned individuals, the sanctioned individuals are prevented from withdrawing the funds held in their accounts and using them to make payments. As a result, business dealings with these individuals is made much more difficult, if not impossible, increasingly isolating them economically.

The financial sanctions are also highly relevant to German companies outside the banking sector: making payments to sanctioned individuals is prohibited. Exceptions exist for liabilities predating the imposition of the sanctions if the payment is made to an account that has been frozen by the banks. Receiving payments from a sanctioned person requires official authorization, which is only granted for liabilities predating the sanctions or in the context of the satisfaction of the individual's basic needs.

Circumventing the sanctions is prohibited. As such, business with sanctioned persons may not simply be transferred to subsidiaries in non-EU countries. German companies should refrain from implementing “creative solutions” even if their business is affected by the sanctions.

### Spotlight: Business with Subsidiaries of Sanctioned Individuals / Entities

Very relevant in practice, but not yet fully settled within the EU, is the question of whether financial sanctions also apply to companies that are owned or controlled by sanctioned individuals or entities. The Council of the European Union<sup>2</sup> and the EU Commission<sup>3</sup> advocate a risk-based approach when it comes to making available funds or economic resources to these persons. Pursuant to this approach there is a presumption that funds and economic resources made available to an entity owned or controlled by a sanctioned person are indirectly made available to the sanctioned person. Therefore,

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<sup>2</sup> Guidelines on implementation and evaluation of restrictive measures, para. 55d (available [here](#)); Best practices for the effective implementation of restrictive measures, para. 66 (available [here](#)).

<sup>3</sup> Commission Opinion of 19.6.2020 on Article 2 of Council Regulation (EU) No 269/2014 (available [here](#)); Commission Opinion of 8.6.2021 on Article 2(2) of Council Regulation (EU) No 269/2014 (available [here](#)).

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the default is that those transactions are prohibited. However, this presumption can be rebutted if, on a case-by-case basis, taking into account all known facts, there is no indication that the funds or economic resources concerned will be used by or be for the benefit of that sanctioned individual or entity. The distribution of profits generated from a transaction by the subsidiary to the sanctioned person is not considered to constitute an indirect provision of funds or economic resources to the sanctioned person.

According to the EU Commission, the same principle should also apply to asset freezes.<sup>4</sup> The German Central Bank (*Deutsche Bundesbank*), on the other hand, continues to advocate the so-called “listing principle,”<sup>5</sup> highlighting the targeted character of the financial sanctions that, in principle, should only apply to the specifically listed individual or entity. The rules on asset freezes thus do not apply to non-listed subsidiaries of sanctioned individuals or entities, unless there are concrete indications that the funds or economic resources are being made available to the sanctioned person.

Dealings with subsidiaries of sanctioned individuals or entities are thus subject to considerable legal uncertainty, as the relevant regulations may be interpreted differently by the EU Commission and the authorities in the member states. As a precautionary measure, any transactions with those subsidiaries should be cleared with the authorities.

### Trade Restrictions

Trade restrictions are primarily bans on certain goods and services or even entire industries. In addition, there are transaction bans with certain key companies and institutions.

The EU's current export restrictions against Russia are broad and include export bans on goods in the following sectors, among others: arms and military equipment, dual-use goods, aerospace, oil & gas exploration, high tech and luxury goods. With the fifth sanctions package, further categories of goods have been added, such as certain machinery, chemicals, plastic products, wood and paper. Since the product categories are numerous, it is essential to carefully check the products concerned by a transaction against the lists published by the EU. The export restrictions also cover the provision of related services, such as financial services (e.g., the financing of a sanctioned good) or the provision of maintenance and repair services. There are extensive exceptions for contracts predating the export ban. New exports may be authorized in specific circumstances.

Import bans apply to iron and steel products, coal, fertilizers, wood, glassware and many other specifically defined products. Again, there are comprehensive lists specifying all goods subject to an import ban.

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<sup>4</sup> Commission Opinion of 19.6.2020 on Article 2 of Council Regulation (EU) No 269/2014 (available [here](#)); Communication from the Commission – Guidelines for Member States on Foreign Direct Investment from Russia and Belarus in light of the military aggression against Ukraine and the restrictive measures set out in the recent Council Regulations on sanctions (available [here](#)).

<sup>5</sup> <https://www.bundesbank.de/de/service/finanzsanktionen/aktueller-hinweis-wegen-der-listung-der-vtb-bank-889068>.

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The capital markets and financial sector are also subject to comprehensive restrictions. For example, trading in securities and money market instruments is prohibited if the securities or instruments were issued by the Russian state or its central bank, certain Russian banks or companies. Securities denominated in euros may not be sold to Russian citizens or companies. In addition, investment bans apply in the energy sector. Banknotes in the currency of an EU member state may not be exported to Russia except for personal purposes while travelling. This prohibition is no longer limited to euro denominated banknotes.

There is a general prohibition on directly or indirectly engaging in any transaction with certain Russian state-owned companies such as Rosneft, Transneft and Gazprom. Exempt are transactions which are strictly necessary for the purchase, import or transport of fossil fuels, in particular coal, oil and natural gas, as well as titanium, aluminum, copper, nickel, palladium and iron ore. The ban also extends to transactions with subsidiaries outside the EU and to companies outside the group that act on behalf of or on the instructions of the state-owned companies subject to the transaction ban. The German Federal Ministry of Economic Affairs and Climate Action is of the opinion that the ban does not extend to subsidiaries within the EU.<sup>6</sup> It is currently unclear whether this interpretation of the EU regulation will also be applied in other member states.

The sanctions regulations are being amended and expanded with high frequency. German companies should therefore closely follow current developments in order to comply with the evolving sanctions.

### Enforcement of Sanctions and Penalties for Violations

Member states are responsible for the enforcement of the EU sanctions. The relevant authorities in Germany are the German Central Bank (for funds, financial resources and financial assistance) and the German Federal Office of Economics and Export Control (*Bundesamt für Wirtschaft und Ausfuhrkontrolle, BAFA*) (for goods, economic resources, technical assistance, intermediary services, services and investments).

In addition to authorizing transactions, the authorities may issue so-called “zero notices” upon request in the event of legal uncertainty. A “zero notice” confirms that a certain good is not subject to export restrictions. In light of the significant consequences of sanctions violations for the company and the acting individuals, “zero notices” should be obtained in each case of doubt.

Under German law, intentional violations of EU sanctions constitute criminal offenses, while negligent infringements are qualified as administrative offenses. Individuals (e.g., the managing director of a company authorizing a prohibited export to Russia) may be punished with imprisonment up to five years, up to 10 years in the case of an export of weapons and military equipment. Administrative offenses can be punished with a fine of up to EUR 500,000.00.

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<sup>6</sup> <https://www.bmwi.de/Redaktion/DE/FAQ/Sanktionen-Russland/faq-russland-sanktionen.html>.

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If the individual has acted in a managerial function for a company, the company may face significantly higher fines and a confiscation of the proceeds from the transaction (e.g., the purchase price paid for the sanctioned goods). The failure to maintain an adequate compliance system that could have prevented sanctions violations in itself constitutes an administrative offense triggering substantial fines.

All companies should therefore carry out an adequate risk analysis when doing business with Russia. With regard to personal financial sanctions, it is advisable to use specialized KYC software that identifies the beneficial owners of the business partner. Most software products automatically run the results against the various international sanctions lists.

### Comparison with the Sanctions Imposed by the US and UK

In addition to EU sanctions, companies in Germany and other EU member states should check whether they or their employees are also subject to other sanctions regimes. While there is a degree of coordination between the EU, the UK and the US, the sanctions are not entirely aligned. A business transaction that is allowed under EU sanctions could be prohibited under the US or UK regime. More detailed information, in particular on sanctions imposed by the US and the UK, can be found in [Willkie's Compliance Concourse](#). You will find in-depth analyses of current developments [here](#).

We list the most significant differences between the US and UK sanctions and the EU sanctions regime below:

#### UK

The UK sanctions regime is similar to that of the EU. Although the lists of sanctioned individuals and entities correspond to a large extent, there are differences and the UK's list is published independently of the EU. In practice, however, the interpretation of the relevant regulations is much stricter in the UK, expanding the scope of prohibited transactions. As an example, in the UK financial sanctions extend automatically to subsidiaries owned or controlled by sanctioned individuals or entities. In addition, the prohibition of circumvention tends to be interpreted more broadly, in particular in circumstances where an act can be seen as encouraging, assisting or otherwise facilitating a breach of sanctions by another person.

In the financial sector and with respect to payment transactions, UK sanctions are significantly more comprehensive than their EU counterparts. Banks in the UK are generally prohibited from processing sterling transactions if there is a suspicion that a sanctioned person is participating in any way in the transaction or the underlying chain of payments.

#### US

The US has also imposed sweeping sanctions and trade restrictions against Russia. The primary sanctions, which are directed at US citizens and companies, are essentially comparable to the EU sanctions except that the investment and trade restrictions in particular go much further than the EU sanctions. Like the UK, the US sanctions regime prohibits a

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wide range of facilitating acts in the context of sanctions violations. The participation in contract negotiations with a target of sanctions, the financing of a transaction (including brokering services) that would be prohibited for a US person to undertake as well as the provision of legal or tax advice involving sanctions targets may be qualified as facilitating a sanctions violation.

So-called secondary sanctions, which can also affect non-US companies doing business with Russia, are currently authorized but have not yet been imposed against any non-US persons.

Companies outside the US should be mindful of the “foreign produced direct product rule” (“FDP Rule”). Pursuant to the FDP Rule, certain US export controls also apply to foreign products manufactured using certain US technology or software. As a result, German companies may be affected if they rely on US technology when manufacturing goods. The FDP Rule is currently suspended with respect to countries that have imposed sanctions against Russia that are similar to the US sanctions. The FDP Rule thus currently does not apply to the EU member states. However, German companies must observe the FDP Rule if, for example, products are exported to Russia via a subsidiary in a country that is not exempt from the FDP Rule.

**Your Willkie team in Germany and in our international offices will be happy to provide you with further advice on these issues.**

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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