



INTERNATIONAL FINANCIAL SANCTIONS

LEGAL FRAMEWORK & OBLIGATIONS OF THE OPERATORS

20 SEPTEMBER 2022



Financial sanctions: How are they defined?

Economic and financial restrictive measures, targeted or not, that:

- Aim to **counter threats** to the international peace and security.
- Aim to **change the behavior** of those that the international community identifies as responsible for these threats.
- **Support** democracy, the rule of law, human rights and **defend** the principles of international law.
- Do **not cause** transfer of property rights.



Legal framework

- **Law of 19 December 2020** on the implementation of restrictive measures in financial matters.
- **Repealing** the Law of 27 October 2010.
- Applicable sanctions in Luxembourg:
 - ❖ **United Nations** (UN sanctions)
 - ❖ **European Union** (EU sanctions)
 - ❖ **Luxembourg** (sanctions decided at national level)





Main changes

- The scope of the law **is extended beyond** terrorism financing.
- **Automatic transposition** of UNSCR designations.
- **Extension** of the scope of persons subject to the Law (i.e. branches)





What else ?

- **Clarification and reinforcement** of powers of supervisory authorities and SRBs.
- **New provisions** on national designations (similar to the provisions of the export control law of 27th June 2018).
- **Strengthening** of penalties:
 - ❖ Imprisonment of 8 days to 5 years.
 - ❖ Fine of between 12,500 EUR and 5,000,000 EUR.
 - ❖ Substantial financial gain = fine four times the amount of the offence.





Financial sanctions landscape

- More than **30 sanctions regimes** EU/UN directly applicable in Luxembourg (**automatic transposition**).
- **Not limited** to terrorism financing (e.g. human rights, cyberattacks, proliferation and use of chemical weapons etc.)
- Competent authorities in Luxembourg in matters relating to financial sanctions:
 - ❖ **Ministries** (Finance, Foreign and European Affairs)
 - ❖ **Supervisory authorities** (CSSF, CAA, AED)
 - ❖ **SRBs** (IRE, OEC, Ordres des avocats, Chambre des Notaires, Chambre des huissiers)
 - ❖ **FIU**



Focus points (a selection)

- **As regards proliferation financing:** Amendment of **FATF recommendations 1 and 2** and **new FATF Guidance on Proliferation Financing Risk Assessment and Mitigation**.
- **Obligation** to carry out a **proliferation financing risk assessment** both at national and at operators' level.
- The subject of proliferation financing risk is included in the new **EU AML package (full alignment with FATF)**.
- **New EU restrictive measures** against **Russia over Ukraine**.





Proliferation Financing

- Refers to the sanctions regimes relating to (a) **The Democratic People's Republic of Korea (North Korea)** and (b) **Iran**.
- **In the context of FATF** “proliferation financing risk” refers strictly and only to the **potential breach, non-implementation or evasion** of the **targeted financial sanctions obligations** referred to in FATF Recommendation 7.
- **As per the FATF guidance** Customer Profile Risk Indicators, Account and Transaction Activity Risk Indicators, Maritime Sector Risk Indicators, Trade Finance Risk Indicators **must be taken into account during the entire duration of the business relationship**.



Ukraine/Russia: Sanctions adopted

- EU has progressively imposed restrictive measures (sanctions) in response to Russia's military aggression against Ukraine.
- What measures has the EU taken against Russia?
 - ❖ Individual sanctions
 - ❖ Financial sanctions
 - ❖ Economic sanctions
 - ❖ Restrictions on geographical economic relations
 - ❖ Etc.
- EU sanctions regime concerning Belarus has been expanded in response to that country's involvement in Russia's aggression against Ukraine



Ukraine/Russia: Main EU Regulations

- **Council Regulation (EU) No 833/2014 of 31 July 2014** concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine
- **Council Regulation (EU) No 269/2014 of 17 March 2014** concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine
- **Council Regulation (EU) No 692/2014 of 23 June 2014** concerning restrictive measures in response to the illegal annexation of Crimea and Sevastopol
- **Council Regulation (EU) No 208/2014 of 5 March 2014** concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine
- **Council Regulation (EU) 2022/263 of 23 February 2022** concerning restrictive measures in response to the recognition of the non-government controlled areas of the Donetsk and Luhansk oblasts of Ukraine and the ordering of Russian armed forces into those areas
- **Council Regulation (EC) No 765/2006 of 18 May 2006** concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine



The competence of the Ministry of Finance

- Deal with matters relating to the implementation of financial restrictive measures on the part of the natural and legal persons, entities and groups concerned, as well as on the part of the natural and legal persons obliged to apply them.
- Exceptionally issue authorizations derogating from the prohibitions and restrictive measures imposed if the legal texts imposing restrictive measures provide this possibility.



Role of the Ministry at EU and supranational level

- **Participation** in the RELEX Group and Expert Groups on extraterritoriality and implementation of sanctions.
- **Communication** with the Commission when it comes to specific questions in matters of sanctions implementation (with or without the issuance of Commission opinions)
- **Participation** in FATF discussions in matters of Financial sanctions.





What are the operators' obligations?

The **Law of 19 December 2020** brings changes,
however

- Obligations to (1) apply sanctions; (2) to report the application thereof and (3) to request authorization before executing an impacted transaction remain **UNCHANGED**.
- Remember: Operators have an obligation to achieve **a specific result**, for example, freezing of funds or economic resources – not an obligation tailored to their means / the nature of their business.
- We do not have the notions of obliged vs. non-obliged entities in TFS; **everyone** is obliged to respect the measures.



What are the operators' obligations?

Financial restrictive measures do not concern only specific sectors or types of activity. Economic operators are obliged:

- To **implement** the financial sanctions **without delay** – important, in particular, to **minimize the risk of capital flight**.
- To **communicate** the implementation to the Ministry of Finance with a copy to the regulator and
- In case operators would like to apply an exemption from the restrictive measure, **to ask and obtain the prior authorization** of the Ministry of Finance.



Targeted financial sanctions

➤ Freezing of funds



"**freezing of funds**" means preventing any move, transfer, alteration, use of, access to, or dealing with funds in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination or other change that would enable the use of the funds, including portfolio management.

➤ Freezing of economic resources

"**freezing of economic resources**" means preventing their use to obtain funds, goods or services in any way, including, but not limited to, by selling, hiring or mortgaging them.

NOTE: These are standard definitions; always look up the definition in the text that serves as legal basis to the restriction.



Exemptions

- The exemptions must be provided for in the legal acts. **No provision, no exemption.**
- To apply an exemption, operators need **a prior authorization.**
- Authorizations are **not** granted with **retroactive effect.**
- In case of execution of a transaction despite the existence of a restrictive measure, operators must contact **without delay** the Ministry of Finance.





Authorizations

- It is the **responsibility** of the operators to check whether the transaction conforms to the sanctions regimes.
- It is the **responsibility** of the operators to request an authorization from the Ministry of Finance, if the legal texts provide for such possibility.
- The authorization requests have to mention the **legal provisions** according to which they are submitted.
- Requests can be sent **by letter or by e-mail** to the Ministry of Finance.



Good practices - examples

- **Consult regularly the consolidated lists of EU/UN.** These are freely accessible.
- **Consult regularly** EU guidelines, FAQs, opinion and tools (EU Sanction map, questionnaires, and due diligence helpdesk).
- **Consult regularly the website** of the Ministry of Finance and of the regulator.
- **Subscribe to the Newsletter** of the Ministry of Finance.



Good practices - examples

- In case of **homonyms**: Contact the Ministry of Finance in case the research does not enable to confirm whether or not the match concerns indeed a designated person or entity.
- Where applicable: Check if **export licenses** have been obtained.
- An export license **does not exempt** the operator from obtaining the authorization for the related financing & vice-versa. In case of doubt, contact the Ministry of Finance.
- Be **particularly vigilant** when it comes to structures that involve persons or entities that either **have already been** designated or, without being listed, **have a history of violations** of financial sanctions. In case of doubt, contact the Ministry of Finance.



Good practices - examples

- Be particularly vigilant when dealing with **sanctioned countries**.
The degree of « sanctioned » can vary (for example, RU is not the same case as DPRK and none of them is like IR – aso), but the implication of a country against which sanctions are applied, is always **a red alert**. In case of doubt, contact the Ministry of Finance.
- Be particularly vigilant on the **links between sanctions regimes**.



Good practices - examples

- Financial sanctions are **not always linked** to an ML or TF offense. Very often the underlying transactions would be **entirely legal** were it not for the designated persons/entities.
- An authorization in a specific case **does not mean** operators do not have to request an authorization in other similar cases. Authorizations apply strictly to the case at hand and are **not transferable** amongst cases, operators or sanctions regimes.
- Contact the Ministry of Finance **before executing the transaction**. And if - **exceptionally** - the transaction is executed in violation of financial sanctions, contact the Ministry of Finance **as a matter of urgency, i.e. not after days, weeks or months**.



Bad practices - Examples

- Absence of freezing of funds or late freezing of funds. It is the **responsibility** of the operator to freeze the funds **without delay**.
- Execution of transactions **without authorization or late request** to the Ministry of Finance.
- Inappropriate procedures regarding sanctions.
- Reporting of homonyms **without prior investigation**.





Bad practices - Examples

- Reticence to provide **required information to authorities**/incapacity to provide the required information (a.o. identity of the designated person, transaction history, documents...) – in general, lack of cooperation.
- Poor **knowledge of financial sanctions regulations** (including the incorrect reading of EU Regulations).
- Absence of **critical thinking**.
- Rejection of **responsibility**.





Reminders

- The Ministry of Finance **does not** issue comfort letters of general nature. Each case is **specific** and each case is **different**.
- It is the **responsibility** of the operator to ensure its compliance with financial sanctions.
- Authorization request must **be complete and clear** (clear explanation, legal basis, evidences etc.)



Extraterritoriality

- The EU introduced the Blocking Statute in 1996.
- The European Union and Luxembourg do not recognise the extra-territorial application of laws adopted by third countries.
- Operators are not discouraged to consult others lists for information purpose only but these lists must not be considered as compulsory and binding.



Questions?





Thank you for your attention!

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