Workshop documentation
requested by the CONT Committee

European Parliament

PROCEEDINGS

Preventing EU funds from reaching sanctioned individuals or entities

Budgetary Control

Policy Department D for Budgetary Affairs
Directorate General for Internal Policies of the Union
PE 756.928- December 2023

EN

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WORKSHOP PROCEEDINGS

Abstract
Sanctions are an essential tool to safeguard EU values and interests, but how can the EU enforce them and protect its budget in the process? With a particular focus on the EU-Russia sanctions, this workshop looked at the issue from various perspectives, including trade sanctions, criminalising sanctions circumvention, asset freezing and tracing final beneficiaries of EU funds.

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This document was requested by the European Parliament's Committee on Budgetary Control.

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European Parliament

WORKSHOP ON

Preventing EU funds from reaching sanctioned individuals or entities

organised by the Policy Department on Budgetary Affairs for the Committee on Budgetary Control

Monday, 6 November 2023
17:00-18:30
European Parliament, Altiero Spinelli 3E2, Brussels

DRAFT PROGRAMME

Opening remarks and introduction

17:00-17:05 **Sándor Rónai**
Vice-Chair of the Committee on Budgetary Control

Trade sanctions

17:05-17:15 **Elina Ribakova**
Bruegel

Circumventing sanctions – a 'Eurocrime'

17:15-17:25 **Paweł Wąsik**
Chair of the Eurojust Economic Crime Working Group and Assistant to the National Member for Poland

Questions and answers

17:25-17:40

Asset freezing

17:40-17:50 **Georgios Pavlidis**
Academic expert in International and European Economic Law

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17:50-18:00 **Maíra Martini**
Transparency International

Comments from the Commission

18:00-18:10 **Pierre-Arnaud Lotton**
Policy Officer, Sanctions unit at FISMA

Questions and answers

18:10-18:25

Conclusions and closing remarks

18:25-18:30 **Sándor Rónai**
Vice-Chair of the Committee on Budgetary Control

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WORKSHOP PROCEEDINGS

Openings remarks by the Vice-Chair

Mr RÓNAI introduced the workshop on 'Preventing EU funds from reaching sanctioned individuals or entities' and welcomed the speakers. He noted that the workshop followed from an exchange of views on the same topic organised by the CONT Committee in March 2023. On this occasion, the committee had welcomed the EU Sanctions Envoy David O'Sullivan to its meeting.

Mr RÓNAI announced that the event would focus on the EU-Russia sanctions regime, which, at the time of the workshop, constituted 11 packages of sanctions adopted by the EU. The measures included trade, energy, financial and transport sanctions, asset freezes and travel bans, a ban on providing funds to individuals and entities on the sanctions list, and specific sanctions to protect EU funding. However, the Vice-Chair also stressed that there were significant concerns that EU funds could still end up in the hands of individuals or companies on the sanctions list. The workshop aimed to address the question of how the EU could tighten up the loopholes in the sanctions regime and protect the EU budget.

First presentation: Current trends in sanctions circumvention and policy responses

Ms Elina Ribakova – Bruegel

Ms RIBAKOVA focused mainly on export control and different ways in which Russia had accessed critical technology after the full-scale invasion. Overall, she introduced three significant findings related to western parts of the battlefield, Russian trade data and export control challenges.

Firstly, Ms RIBAKOVA described the origin of the data. Bruegel had used data from Ukrainian authorities and NGOs that had looked at weapons in Ukrainian territory. Ms RIBAKOVA emphasised that they had obtained information about different types of weapons such as armed vehicles, drones, missiles and helicopters. According to data from the Ukrainian authorities and the KSE Institute, the majority of western components had come from the US and a smaller share from European countries such as Germany, the Netherlands and Switzerland. The rest of the components had been produced by companies based in China, Japan, Taiwan or other countries. Ms RIBAKOVA said that some components had been produced in spring or summer 2023. That meant that Russia still had access to critical components and had incorporated them into its domestic production of military equipment.

Secondly, Bruegel had scrutinised Russian trade data. Data showed that Russia had been able to obtain critical components in the last two years. The import of high-priority battlefield items had fallen after Russia's full-scale invasion of Ukraine in February 2023. Thereafter Russia's imports had recovered. Ms RIBAKOVA pointed out that Russia had imported high-priority battlefield items worth USD 5.6 billion between January and July 2023. During this period, imports consisted of communication and transmission equipment, data processing machines, transformers, converters and inductors. Ms RIBAKOVA stressed

that almost 25 % of total imports included electronic integrated circuits with a total cost of USD 1.3 billion.

Thirdly, Ms RIBAKOVA drew attention to the producers of these critical components and export control challenges, based on Russian customs data and data from the KSE Institute. Two major European producers, namely STMicroelectronics (CHE) and Infineon (GE), feature among the top producers of Russian imports. American companies dominated the list of the top 5 biggest producers: Intel Corporation, Analog Devices, AMD and IBM. The Chinese companies Huawei Technology and Lenovo Group were also big producers of Russian imports.

Bruegel had tried to trace the export channels that these companies used in order to deliver products to the Russian market. Recently, European countries had put significant effort into addressing on-shipment problems and prevention of direct shipment to Russia. However, data showed that companies did not necessarily produce their products in Europe or in the US; it was likely that these companies had moved their production into third countries where western technology was used in manufacturing.

Ms RIBAKOVA illustrated this point with two companies, Intel Corporation (US) and Infineon Technologies (GE), whose production was not based in home countries but in Asia. For instance, Intel Corporation produced most of its products in China, Malaysia and Vietnam. Afterwards, these products were shipped to Hong Kong and subsequently to Russia. It was evident that Russia was not able to fully substitute western components through Chinese production.

Lastly, Ms RIBAKOVA mentioned policy recommendations such as strengthening enforcement, improving implementation and engaging the private sector. She stressed the need to strengthen funding and the ability to impose and analyse export control limitations. However, the government sector was not able to implement these export control practices fully without companies' initiative and their internal control documentation. At this stage, it was necessary to link financial data with corporate data. Given the share of western imports, Ms RIBAKOVA recommended giving responsibility to companies. Companies should be aware whether their products were on-shipped to Russia and have mechanisms in place to prevent it. Further, government officials were able to access a large amount of detailed information, such as banking transactions, or they could require this kind of information from banks. Government officials and companies should participate in training on export control and its challenges.

<u>Summary of policy recommendations</u>

1. Strengthening enforcement

- Build sufficient capacities
- Willingness to investigate transactions and impose meaningful penalties
- Implement stricter liability, responsibility for corporates who violate export controls
- Sanction third-country entities that are engaged in export control violations
- Link financial and corporate sectors' efforts

2. Improving implementation

– Broaden categories for export control
– Set up systems to track physical movements of high-priority items

3. Engaging private sector

– Give guidance to major producers
– Support financial institutions' efforts
– Provide technical assistance and training to SMEs

Second presentation: Circumventing sanctions – a 'Eurocrime'

Mr Paweł Wąsik – Chair of the Eurojust Economic Crime Working Group and Assistant to the National Member for Poland

Mr WĄSIK introduced himself as a representative of Eurojust, the Agency coordinating the criminal response to the circumvention of sanctions. The Agency supports communication and cooperation between lawyers, judges, prosecutors, practitioners and law enforcement officers.

Mr WĄSIK presented the challenges posed by current criminal law on sanctions in Member States. One challenge was the variation of penalties Member States issued for the violation of sanctions. Mr Wąsik referred to a map, which displayed three categories for the penalties in Member States; (i) criminal and administrative offence, (ii) criminal offence only, (iii) administrative offence. While 90% of Member States did classify the violations of sanctions as a crime, varied penalties for offences made cooperation between national authorities difficult.

Mr WĄSIK highlighted that Member States were responsible for the implementation and enforcement of sanctions as well as the criminal response. As such, there was no common EU approach. National authorities were required to adopt national penalties, take concrete steps to enforce such measures and ensure that measures taken were effective. Mr Wąsik suggested that without a common EU approach, authorities faced difficulties when tackling what was 'in essence' cross-border crime. He went on to stress that, while in 90% of Member States, the circumvention of sanctions was a crime, coordination of and cooperation on an EU response was needed, and supported discussions on the extension of the European Public Prosecutors Office's (EPPO) competences to include the circumvention of sanctions.

Mr WĄSIK referred to the December 2021 'Genocide Network' report, 'Prosecution of sanctions (restrictive measures) violations in national jurisdictions', which contained a comparative analysis of legislation in the field of circumventing sanctions and would inform the basis of his presentation.

Mr WĄSIK then gave a practical example of Member State divergence, introducing the Polish law for criminal sanctions. He referred to Poland's Article 33 of section 6 'Penal provisions, fines' of the 'Trading of goods, technology and services of strategic importance to state security act', highlighting a penalty of up to 10 years in prison and the potential for effective deterrence. However, Article 33's definition of criminal offences differs significantly from

national law in other Member States. He explained that without a harmonised definition for the criminal violation of sanctions, investigation requests are often refused. European Investigation Orders (EIOs), European Arrest Warrants (EAWs), Freezing Orders (FOs), requests for bank information and requests for company searches are subject to the test of double criminality, which is frustrated by differing definitions of criminality. In fact, Mr WĄSIK had never seen a case relying on the aforementioned act.

Definition of criminal offences

Mr WĄSIK welcomed the 2 December 2022 proposal for a directive on the definition of criminal offences and penalties for the violation of restrictive measures. The proposal would harmonise the definition of nine criminal offences including (i) Violations of asset freeze measures, (ii) Violations of travel bans, (iii) Violations of economic and financial sectoral measures and arm embargoes, and (iv) Circumvention of EU sanctions. He drew attention to the distinction between the criminal response to *natural persons* and *legal persons*. For *natural persons*, the proposed directive would introduce minimum and maximum prison sentences and define additional penalties, giving Eurojust greater scope to issue EAWs, EIOs and FOs. For *legal persons* the proposal would introduce mandatory fines, exclusion from entitlement to public benefits or aid, and exclusion from public funding, grants and concessions. Mr WĄSIK contended that harmonised penalties for legal persons in particular would improve Eurojust's ability to enforce measures that counter sanction violations.

Mr WĄSIK also welcomed the 25 May 2022 proposal for a directive on asset recovery and confiscation. He explained that the proposal clarified the notion of the 'proceeds' of crime. Consequently, when a designated person had committed or participated in circumvention offences, associated funds and economic resources would be considered proceeds of crime and could be confiscated by asset recovery offices.

In this connection, Mr WĄSIK drew attention to the Eurojust Report on Money Laundering published in October 2022. The report discusses challenges and best practices in the area of money laundering, which could be of interest in the fight against sanctions violations.

Practical implications and opportunities

Mr WĄSIK advocated for an amendment to Directive (EU) 2018/1673 on combating money laundering by criminal law. He recommended that the directive should define violation of Union restrictive measures as a predicate offence for money laundering. He went on to reference a case concerning two Member States, in which the investigation could not be executed because the violation of sanctions was not treated as a predicate offence.

Mr WĄSIK concluded by reiterating his support for directives supporting a common approach to sanction violation definitions and penalties. He explained that the harmonisation of national approaches would eliminate the need for double criminality tests, thereby facilitating the execution of EIOs, EAWs and FOs, as well as cooperation under Joint Investigation Teams or the EPPO. The new legislative tools would also enable better cooperation between home authorities, the Commission, Europol, Eurojust and the EPPO, and facilitate the coordination of investigations.

First round of questions

Carlos COELHO (EPP – BUDG) emphasised the importance of the effective implementation of sanctions. To counter public perceptions of the EU as an institution that takes decisions, but fails to translate them into effective action, Mr Coelho stressed the need for sanctions to be enforced.

Mr COELHO directed his question to Mr WĄSIK, asking whether the legal approach would be enough. He also sought clarification on the transposition of directives from last year, asking how many Member States had already approved legal texts in their countries. Lastly, he questioned whether the directive would provide sufficient tools to deal with the issue, or whether something at the political level would be needed.

Similarly, Mikuláš PEKSA (Greens – BUDG) appreciated the content of the workshop. He referenced a project from Czech company Datlab, which had analysed publicly available data and found that 40 000 companies with ties to Russian ownership had received EU funds. The analysts also stressed that at least 242 companies had received more than EUR 1.5 billion since the beginning of the conflict. According to this data, around 35 % of owners were properly recorded in the records. He also pointed out that it was very difficult for any public servant to exclude companies from procurement and other activities if they were not recorded. Thereafter, Mr PEKSA asked what had been done in order to improve records and databases, with reference to the existing early detection and exclusion mechanism and data mining and risk-scoring tool. He was also interested in what progress had been made on the digitalisation and identification of those connected to the Russian Government.

Sándor RÓNAI (S&D – BUDG Vice-Chair) appreciated the practical insight into sanction implementation. He pointed out that the Hungarian Government had done nothing to be independent from Russia, with its continued purchase of natural gas. In addition, the Hungarian foreign minister had visited and signed contracts with Gazprom. He assumed that these contracts were probably not beneficial for the country and suggested that their confidentiality removed them from scrutiny. Mr RÓNAI also mentioned that the Hungarian prime minister had promised Hungarians that he would not vote in favour of sanctions in Brussels, but ultimately reneged on his commitment. Mr RÓNAI questioned what the process was when countries, not private companies, violated sanctions.

First round of answers

Elina Ribakova

Ms RIBAKOVA highlighted the importance of strengthening implementation and enforcement. She also highlighted the risk of credibility damage when Member States committed to restrictive policy choices but continued to be open for business, claiming that the whole infrastructure of the economic state draft sanctioning business was at risk of being undermined. She acknowledged it was harder for certain countries and companies than for others and that some countries were hit harder than others, with reference to the Baltic States. Ms RIBAKOVA stressed the importance of an EU mechanism to address these inequities.

Further, Ms RIBAKOVA highlighted that unanimity provided a barrier to enforcement of measures, suggesting bypassing the Member States with an unfortunate proximity to the Russian Government.

She also mentioned that her presentation was focused on implementation and enforcement. She did not advocate for more top down political or policy measures at this stage, instead emphasising that authorities should be given the ability to implement and enforce. The critical measure was to force the compliance of companies.

Further, RIBAKOVA stressed three issues connected with energy dependence. Firstly, that the oil price cap had been continuously violated in many respects, resulting in increased revenues for Russia. In fact, Russia might have a balanced budget this year because they are still able to export significant quantities of oil and gas.

Secondly, she highlighted that the European embargo had had a very strong impact on the Russian economy, but it had subsequently been diluted by poor compliance with the oil price cap. Ms RIBAKOVA emphasised that if international companies continued to service Russian energy companies, Russia would continue to succeed and be able to sell LNG on international markets. Even if Europe refused to buy LNG, Russia could continue to sell to Japan and potentially more constrained markets. Ms RIBAKOVA also drew attention to the fact that Russian companies could not start new energy projects without the support of international companies.

Paweł WĄSIK

Mr Paweł WĄSIK responded that the proposed definition of the violation of sanctions as an offence was sufficient, so long as it went hand in hand with the definition of sanctions violation as a predicate offence linked to money laundering. Mr WĄSIK reiterated that the core issues were a lack of harmonised definitions, the lack of a common approach to criminal violations of sanctions and the lack of a definition for 'predicate offence'. He acknowledged that the proposal was still in the European Parliament before the first reading. From Mr WĄSIK's perspective, it might be enough, but it might be too late. With a limited number of criminal cases concerning the violation of sanctions, despite many Member States defining it as a crime, Mr WĄSIK referred to the reporting of crimes as a key issue. He went on to welcome the Commission's whistle-blower initiative, but added that problems regarding digitalisation, the level of intelligence exchange and low enforcement data exchange may inhibit Eurojust's ability to open investigations.

Mr WĄSIK drew attention to the proposal concerning asset recovery and confiscation. In the first draft, asset recovery offices were given access to a lot of data within Member States and could share it among them at EU level. Data concerning banking information, social security information and tax information, are crucial for detecting crime. Unfortunately, in the latest version, some of those information tools were missing, as well as the instant freezing order for asset recovery whenever linked to sanctions. Mr WĄSIK stressed that those measures would solve some problems in detecting the possible violation of sanction, and would give Eurojust the possibility for rapid response at the early stages of criminal activity.

Third presentation: Tracing, freezing and confiscating assets

Dr Georgios Pavlidis – Academic expert in International and European Economic Law

Dr PAVLIDIS thanked the organisers and committee members for the opportunity to present his ideas on tracing, freezing and confiscating assets, with special emphasis on the case of sanctions against Russia.

Dr PAVLIDIS gave the value of frozen Russian assets within the EU. Private assets from sanctioned oligarchs, individuals and entities amounted to EUR 21 billion. Russian Central Bank (RCB) assets held in the EU were EUR 200 billion, with a further EUR 100 billion held outside the EU. The figures for Ukraine's reconstruction needs were estimated to be between EUR 410 and EUR 750 billion. He concluded there was a compelling case to utilise frozen assets to support Ukraine's reconstruction.

Tracing and freezing assets

Dr PAVLIDIS advocated for the enhancement of mechanisms for tracing and freezing Russian assets. He suggested that the Commission's Freeze and Seize Task Force, and adjacent efforts outside the EU, required provisions to empower asset offices. Dr PAVLIDIS acknowledged that the directive on asset recovery and confiscation would improve tracing capabilities. However, he urged consideration of bolder measures, citing the Swiss 'Lex Devalier' model that reversed the burden of proof for the legality of frozen assets.

Dr PAVLIDIS envisaged two scenarios for the release of frozen assets when the war ended: (i) A peace agreement with reparations, enabling frozen assets to be transferred to Ukraine; (ii) A peace agreement without reparations, or which set the amount of reparations at less than the value of the RCB assets, which would enable Russia to demand the return of the assets held in excess.

Confiscation

Dr PAVLIDIS highlighted that freezing assets was a temporary measure. Conversely, confiscation represented a permanent deprivation of property. As such, the confiscation of both private and sovereign assets posed significant legal obstacles.

The confiscation of *private assets* would require a criminal conviction, argued in court on a case-by-case basis. International investment law does not allow for expropriation and would present an obstacle to litigation. A conviction would also require a 'link to the war' to be established under a new legal basis.

The confiscation of *sovereign assets* posed further challenges. As sovereign assets, RCB foreign reserves were subject to immunity against 'attachment, arrest and execution' under international law. Consequently, confiscating Russian assets under international law would require either: (i) a UN Security Council resolution, (ii) a judgment from the International Court of Justice (ICJ), or (iii) a post-war settlement. All three required Russia's consent and did not offer a feasible path to confiscation.

Dr PAVLIDIS proposed further legal bases for the confiscation of Russian assets. However, each option also had significant limitations:

1. A UN general assembly resolution could recognise the need for reparation. However, UN General Assembly resolutions are non-binding.

2. Article 31 and 49 of the International Law Commission's (ILC) principles of state responsibility could provide legal grounds for action. However, as a third party to the conflict, EU Member States would find it difficult to invoke the provision of an injured state. More importantly, there was no international judicial forum for such claims, because Russia did not recognise the International Criminal Court's (ICC) jurisdiction.

3. The Iran-US Claims Tribunal and the Iraq Compensation Commission may offer insights. However, parallels were limited in the absence of a UN Security Council resolution, and by uncertainty over the war's conclusion.

Investing Russian assets

Dr PAVLIDIS introduced a process by which the Commission could legally manage the investment of assets, and use the proceeds for Ukraine's reconstruction. The process required financial institutions to create separate balance sheets for Russia's assets and invest them in liquid, highly rated assets with short maturities. Proceeds would then be taxed, transferred to the EU budget and used to fund Ukraine's reconstruction. The European Council had expressed support for this option in their 26-27 October meeting.

'Line Jumping Litigants'

Dr PAVLIDIS detailed another legal route to accessing Russian funds. Individuals and entities already holding judgments against Russia, including Ukrainian state-owned enterprises, could attempt to access frozen RCB funds through domestic or international litigation. Such cases would effectively bypass reparations, instigating a 'race to the assets'. Dr PAVLIDIS highlighted two factors that would limit 'line jumping litigants'' chance of success. They would be required to: (i) demonstrate that the nominal owner (RCB) is legally the alter ego of their judgment debtor Russia (recently the ICJ rejected a similar argument in the case of Iran's central bank), (ii) find an exception to sovereign immunity and obtain a licence from the administrator of sanctions.

Other ideas

Dr PAVLIDIS introduced three further proposals that could enable access to Russian assets.

1. *Legislation for compensation* could enable victims to claim from Russian state assets but would require legislation that eliminates sovereign immunity for civil action.
2. *A tariff on Russian oil exports*, which allocates revenue generated to a Ukrainian support programme.
3. *A diversion of payment for Russian oil into escrow accounts*, to be released only when an agreement is reached on the lifting of sanctions and provision of funding to Ukraine.

Recommendation

Having explored the limitations presented by various routes to frozen Russian Assets, Dr PAVLIDIS recommended a proposal from Prof. Paul STEPHAN. He suggested that, instead of outright confiscation, frozen assets should be leveraged to extract concessions from Russia regarding the end of the war of aggression against Ukraine and the reconstruction of Ukraine.

He proposed that as long as the conflict continued, assets could remain frozen (no action needed), and their profits invested and taxed. When the conflict concluded, countries that had imposed sanctions should make the termination of sanctions, and the return of assets, conditional on Russia agreeing to make reparations. Dr PAVLIDIS went on to recommend that countries contributing to Ukraine's reconstruction should condition their payments on the receipt of a refund from Russia. Russia's assets would then function as a security against the reimbursement of the money paid for Ukraine's reconstruction. This route would not require a UNSC resolution and would bypass international mechanisms. Dr PAVLIDIS proposed that it could be based on a carefully drafted provision to be included in Council resolution 269 of 2014.

Fourth presentation: Tracing final beneficiaries of EU funds

Ms Maira Martini – Transparency International

Importance of beneficial ownership data

Ms MARTINI elaborated on the issue of tracing final beneficiaries of EU funds and drew attention to major gaps in the current practices and procedures across EU Member States. At the beginning, Ms MARTINI emphasised the importance of knowing the beneficiaries and details of ownership in the context of asset freezing, sanctions and confiscation. It was very unlikely that sanctioned individuals used their name while doing business. Ms MARTINI said that they used legal entities and legal arrangements or family members and business partners. Even though it should be possible to identify who was behind these entities, existing loopholes often frustrated identification. Recently, the EU beneficial ownership registers created, a critical instrument for verification of beneficial ownership.

Compliance

Further, Ms MARTINI highlighted the four main issues that should be addressed at the EU level. The first issue was related to compliance. Ms MARTINI said that they could not verify whether or not legal entity and arrangements complied with the rules across Member States because most Member States did not conduct such assessments themselves. In addition, Transparency International did not have access to compliance rates across beneficial ownership registers.

Transparency International had analysed French beneficial ownership registers, which were accessible to civil society organisations, and had ascertained that 1/3 of companies registered in France had not declared beneficial owners, despite being obligated to do so

since 2017. Ms MARTINI emphasised that law enforcement in this area is not sufficient, with only one entity sanctioned between 2017 and 2020 for non-compliance. Furthermore, Transparency International was not able to track the owners of 30 % of all French real estate parcels because of non-compliance issues and other loopholes in existing legislation. Further, Ms MARTINI said that Transparency International had found more than one thousand parcels in France that were owned by politically exposed persons from Russia.

Definition of beneficial owner

Ms MARTINI also drew attention to the definition of 'beneficial owner'. Many countries took as a rule that only owners possessing more than 25 % of a fund needed to be disclosed as beneficial owners. It was very difficult to verify or identify investors who owned less than 25 % of a fund. Ms MARTINI pointed to investment funds, such as hedge funds and private equities, as an example of legal vehicles that did not receive sufficient attention in this regard, since investors in this type of fund were very unlikely to hold more than 25 % of the assets due to the nature of the funds. When it analysed investment funds based in Luxembourg, Transparency International found that information in 80% of cases was not sufficient to understand ownership. For this reason, it was difficult to trace real investors or additional information such as the origin of the money coming into these funds.

Data verification

Ms Martini stressed that data in registers should be verified. The forthcoming 6th Anti-Money Laundering Directive would be making concrete recommendations for improvement; although the current rules state that data should be verified, in practice only two EU Member States had an extensive verification mechanism in place, which was another obstacle in the verification process. Further, in the majority of Member States, registry authorities did not have the legal mandate or financial, human and technical resources to verify data. Consequently, data was often entered into registers without checking it, thereby undermining the quality of data.

Access to registers for authorities and the public

Last year, Transparency International had conducted a survey on access to data among law enforcement and financial authorities across the EU Member States. The results of the survey showed that responsible authorities did not have direct access to registers in some Member States. They were required to ask other authorities and often received access only for specifically requested data. They therefore needed to know exactly what they were looking for, which defeated the purpose of such registers.

Prior to the CJEU ruling in November 2022, Transparency International had scrutinised the implementation of the beneficial ownership registers and access to them. The results differed significantly among the EU Member States. In October 2022, many Member States were lagging behind. Around half the Member States had free access to public registers. The rest put many restrictions on access to registers, for instance, the requirement of providing an identification number or social security number. Many countries also required fees for access (AT, GE, IR, RO, SE). Finland and Spain provided only private registers, while Italy had no register at all as of October 2022.

The situation had changed after the CJEU ruling; several countries including Austria, Germany, Belgium, Ireland, the Netherlands and Luxembourg had suspended public access to registers, and civil society and journalists had thus lost access, as well as foreign competent authorities. On the other hand, Romania and Sweden had made their registers publicly available.

One year later, most Member States that had suspended access had found a solution to ensure that those with legitimate interest had access once more, but the solutions varied considerably. Only the Dutch, Irish and Cypriot registers remained suspended for the public. Ms MARTINI said that journalists and civil society could only access Irish registers after submitting proof that beneficial owners had been convicted for money laundering in the past. Similarly, several countries only enabled access once 'legitimate interest' had been demonstrated (AT, BE, FI, GE, IT, LU, ES). Greece provided only a private register.

To summarise, Ms MARTINI emphasised that authorities should have the right type of access to detect cases and implement sanctions. Similarly, journalists and civil society should have broad access to information in these registers.

Comments from the Commission

Mr Pierre-Arnaud Lotton – Policy Officer, Sanctions Unit at DG FISMA

Mr LOTTON noted that implementation and enforcement were high on the Commission's agenda. He then addressed the sanctions framework, and explained that Member States were responsible for the implementation and enforcement of sanctions at national level, while EU law defined the core principles. Within this framework, the Commission played an active role in strengthening information sharing between Member States, within Member States, and between Member States and the Commission. For example, the Commission set up a Freeze and Seize Task Force for the first Russia-Ukraine sanctions. This acted as a forum to connect the dots, notably between national-level agencies in charge of implementation and enforcement.

Mr LOTTON outlined three further initiatives in 'Works Train 1', designed to strengthen information sharing and support the implementation of sanctions.

1. The Commission had set up an Expert Group, which met on a monthly basis and served as a forum for Member State authorities to raise implementation issues and pursue common solutions.

2. The Commission had launched an IT platform, which enabled quick and secure information sharing between Member States.

3. The Commission had created a publicly available whistle-blower tool, which enabled contributors to report sanction violations anonymously. The Commission referred credible and workable reports to the relevant national enforcement framework.

The Commission representative referred to 'Works train 2' as a 'learning by doing' endeavour. Following 11 sanctions packages, the Commission had identified what worked

well and where improvements were necessary. Consequently, sanctions packages now prioritised the empowerment of national competent authorities, enabling them to lift obstacles at national level when implementing and enforcing sanctions. For example, some Member State authorities were formerly unable to request information from other agencies because data protection rules restricted access to specific databases. The Commission had lifted rules where possible, mandating the free flow of information between agencies at national level. The Commission representative recognised that the competence stratification of sanctions implementation necessitated high levels of information sharing between national authorities, such as the Ministry of Finance, the Ministry of Justice, Customs and Foreign Affairs. Packages adopted at EU level aimed to facilitate this.

The Commission representative referred to the proposed directives already highlighted by previous speakers. The two directives tabled were; (i) on sanctions violations and criminalisation, (ii) on asset recovery and confiscation. He contended that the directives would significantly strengthen the enforcement framework for sanctions in the EU.

'Works train 3' recognised that sanctions stemmed from directly applicable regulations and it was important that operators were aware of what the regulations actually mandated. As such, the Commission had invested in guidance, issuing over 500 frequently asked questions on the sanctions provisions. This aimed to facilitate effective implementation of sanctions regulations by both private and public sector operators. The Commission was also promoting a list of high-priority items, defining the critical components that supported Russia's war in Ukraine, so that EU exporters were aware of the need to apply specific due diligence when dealing with such items. The list also supported outreach to third countries, encouraging them to apply similar diligence when re-exporting critical items. Finally, the representative informed the workshop that the Commission had appointed an EU Sanctions Envoy, tasked with reaching out to third countries, clarifying EU sanctions and limiting circumvention.

Following the Commission's contribution, no additional questions were raised.

BRIEFING ON

Preventing EU funds from reaching sanctioned individuals or entities

Author: Eleanor Remo James

BRIEFING

Requested by the CONT Committee

European Parliament

Preventing EU funds from ending up with individuals or companies tied to the EU-Russia sanctions list[1]

KEY POINTS

- To date, 1 551 individuals and 245 entities appear on the **EU-Russia sanctions** lists;
- The EU has excluded Russia from **public contracts and EU funding**;
- Some data on **EU funding recipients** under direct and indirect management is available in the Commission's tools, though it is hard to cross-check such data; data on EU funding under shared management is scattered across multiple platforms, making analysis of recipients difficult;
- The Commission proposes to make the use of a risk-scoring tool available to Member States compulsory, including under direct and indirect management, in the recast of the Financial Regulation. For 2021-2027, data on contractors and beneficial owners of beneficiaries and contractors will be added to the list of mandatory data to be uploaded in **ARACHNE**, which should increase its usefulness in sanctions enforcement;
- The upcoming 6th **Anti-Money Laundering Directive** (AMLD6) is expected to introduce additional transparency measures in compliance with the data protection case law of the CJEU, while closing loopholes;
- Other ongoing **Commission initiatives** are expected to improve the effectiveness and enforcement of EU sanctions in general.

The EU currently has more than 40 sets of restrictive measures in place. Some implement sanctions adopted by the United Nations, while others have been adopted by the EU autonomously. Such sanctions are binding on the Member States and any individual or entity under the Member States' jurisdiction. They are an invaluable tool for safeguarding EU values, maintaining international peace and security, and consolidating and supporting democracy, the rule of law and human rights[2].

The EU first imposed sanctions on Russian and Belarussian individuals and entities in 2014 in response to the unprovoked violation of Ukrainian sovereignty and territorial integrity by Russia; the sanctions were renewed and expanded multiple times over the ensuing years. In response to Russia's illegal invasion of Ukraine on 24 February 2022, the EU adopted 11 successive packages of sanctions, with the most recent adopted on 23 June 2023. However, the Commission has pointed to the inconsistent enforcement of

[1] This updated briefing serves as background information for the CONT Committee workshop of 6 November 2023 on 'Preventing EU funds from reaching sanctioned individuals or entities'.

[2] Commission proposal of 2 December 2022 for a directive of the European Parliament and of the Council on the definition of criminal offences and penalties for the violation of Union restrictive measures (COM(2022)0684).

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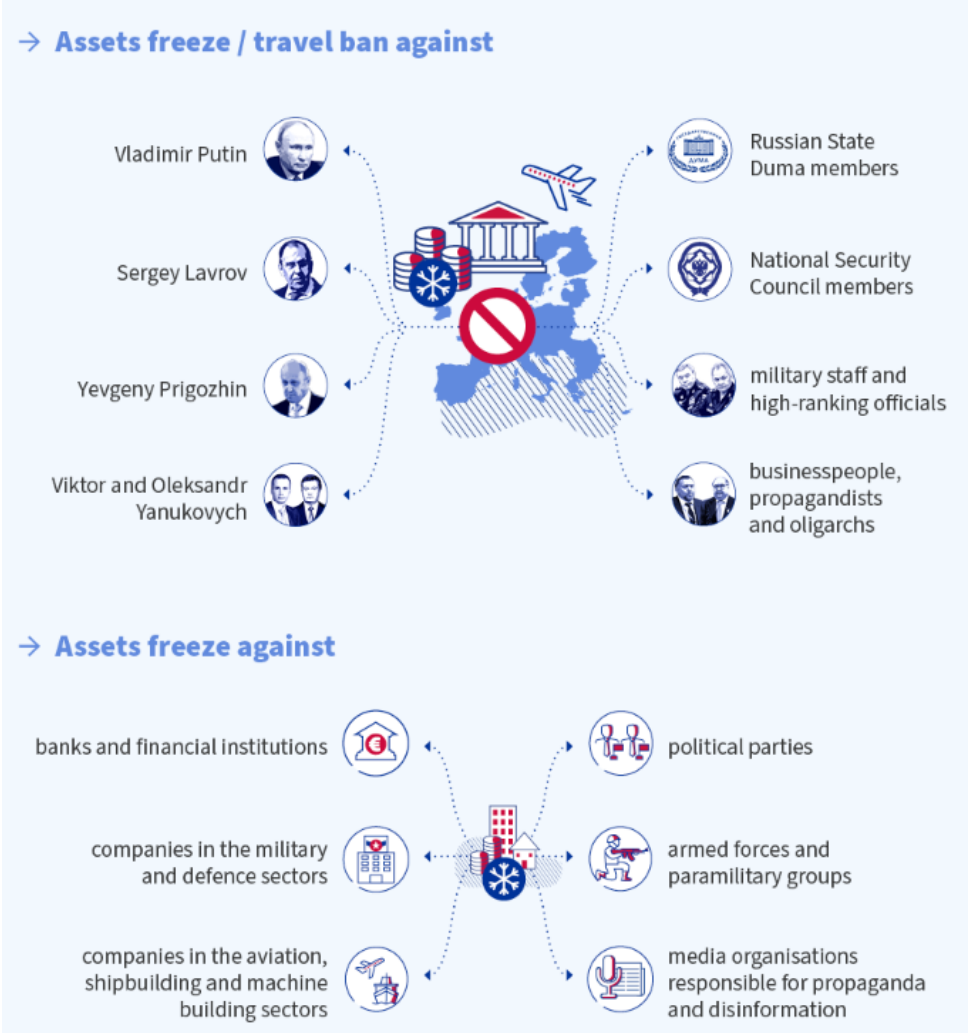
restrictive measures and to the intensification of schemes to circumvent them, leading to concerns that EU funds are still finding their way into the hands of those sanctioned[3].

This briefing will give a brief overview of the EU-Russia sanctions framework, before discussing existing EU tools for protecting its financial interests, access to beneficial ownership data and EU initiatives to ensure sanctions enforcement.

1. EU-Russia sanctions framework

1.1 EU-Russia sanctions

On 23 June 2023, the Council adopted its 11th package[4] of sanctions against Russia, bringing the list[5] of those sanctioned under the EU-Russia Sanctions Regulation[6] to a total of 1 551 individuals and 245 entities[7]. Among those sanctioned are top political representatives, oligarchs, military personnel and propagandists who are threatening the territorial integrity, sovereignty and independence of Ukraine.



Source: https://www.consilium.europa.eu/en/infographics/eu-sanctions-russia-ukraine-invasion/

[3] European Council, Council of the European Union, 'Timeline – EU restrictive measures against Russia over Ukraine'.
[4] Council press release, 'Russia's war of aggression against Ukraine: EU adopts 11th package of economic and individual sanctions', 23 June 2023.
[5] Consolidated list of persons, groups and entities subject to EU financial sanctions, European Commission.
[6] 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, OJ L 078, 17.3.2014, p. 6.
[7] European Council, Council of the European Union, 'Infographic – EU sanctions against Russia over Ukraine (since 2014)'.

In addition to assets freezes and travel bans, the sanctions regime includes **financial sanctions**, such as restrictions on Russia's access to the EU's capital and financial markets, **transport sanctions**, such as the closure of EU ports to Russian vessels, **energy sanctions**, such as a price cap on Russian oil, **defence sanctions**, such as a ban on exports to Russia of arms, ammunition and technology for military use, and **trade sanctions**, such as a ban on imports from Russia of steel and other goods and materials.

The EU has also imposed financial, trade, energy, transport and other **sanctions on Belarus** in response to its involvement in the Russian aggression against Ukraine. Asset freezes in this connection now apply to a total of 233 individuals and 37 entities; individuals sanctioned are also subject to a travel ban.

1.2 Specific sanctions to protect EU funding

The 5th sanctions package[8], adopted on 8 April 2022, introduced specific sanctions to protect EU funding. They include:

- a ban on the participation of Russian nationals and entities in **public procurement contracts** in the EU, whether directly or indirectly;
- **restrictions on EU funding** to Russian publicly owned or controlled entities under EU, Euratom and Member State programmes;
- a ban on providing services to **trusts** with a Russian connection[9].

Ongoing public procurement contracts falling under the new rules were to be terminated by October 2022.

Despite these robust measures, individuals and companies subject to the sanctions on Russia are still likely to be finding ways to circumvent the EU funding sanctions and use EU funding for their own purposes.

1.3 Asset freezing

To ensure that individuals and entities sanctions under the EU-Russia Sanctions Regulation cannot use their money to support the Russian regime, all accounts belonging to those individuals and entities have been frozen. A **ban on providing funds** to individuals and entities on the sanctions list, whether directly or indirectly, seeks to further limit access to funds for those concerned. According to the Council, EUR 21.5 billion in assets have been frozen in the EU so far, and EUR 300 billion in assets from the Russian Central Bank have been blocked in the EU and G7 countries[10]. Under Article 8 of the EU-Russia Sanctions Regulation, EU operators are required to report information on frozen assets and assets that should be frozen.

Tracing and freezing assets before they disappear or change ownership is a complex task. To facilitate the effective implementation of EU sanctions, a Commission proposal[11] adopted in May 2022 aims to empower national Asset Recovery Offices by providing them with the information they need to trace and identify the assets of individuals involved in criminal activities (which should soon include the violation of sanctions[12]) and to give them new **urgent freezing powers** to ensure that assets do not disappear before criminal proceedings are finalised[13].

[8] Commission press release, 'EU agrees fifth package of restrictive measures against Russia', 8 April 2022.

[9] Articles 5(k), 5(l) and 5(m) respectively of Council Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, OJ L 229 31.7.2014, p. 1.

[10] European Council, Council of the European Union, 'EU sanctions against Russia explained'.

[11] Commission proposal of 25 May 2022 for a directive on asset recovery and confiscation (COM(2022)0245).

[12] Once the Commission proposal for a directive on the definition of criminal offences and penalties for the violation of Union restrictive measures is adopted, 'the rules on tracing and identification, freezing, management, and confiscation measures will become applicable to property related to the violation of Union restrictive measures. In the end, proceeds of the violation of Union restrictive measures, for example in instances where individuals and companies would make funds available to those subject to targeted financial sanctions (i.e. asset freezes), could become the object of confiscation measures'.

[13] European Commission, 'Confiscation and asset recovery'.

In terms of **sovereign assets**, discussions in recent months have centred around what to do with the Russian assets currently frozen, since a legal framework allowing for their confiscation does not yet exist. In its resolution of 16 February 2023[14], Parliament called for a 'legal regime allowing for the confiscation of Russian assets frozen by the EU and for their use to address the various consequences of Russia's aggression against Ukraine, including the reconstruction of the country and compensation for the victims of Russia's aggression'. Suggestions for using the proceeds of such assets to fund Ukraine's reconstruction have included investing the assets in securities and introducing a windfall tax.

2. Protecting the financial interests of the Union in the context of the EU-Russia sanctions

2.1 EU databases and tools

For funds under direct and indirect management, the Commission collates data on the direct recipients of funding in the **Financial Transparency System** (FTS)[15]. The FTS publishes data on grants, prizes, public procurement, financial instruments, budget support and internal experts. However, the FTS does not contain all the information required to gain a complete picture of where EU funds end up. For example, there is no requirement to publish information about grants awarded by intermediate bodies (indirect management) in the FTS. According to a 2023 study for the CONT Committee, the FTS has a number of shortcomings: it shows financial commitments, but does not show the actual disbursement of grants; data quality checking consumes a lot of resources and the FTS is only fully updated once a year; there is a lack of consistency in the content and presentation of information provided in different Commission portals and databases; and the names of direct recipients in the FTS include spelling and formatting errors which make it difficult to link or crosscheck FTS data with other Commission systems[16]. The study recommends that the Commission use 'common unique entity and project identification keys across all portals and databases to facilitate reconciliation of publicly available information provided by different systems'.

When implementing funds directly, the Commission ensures compliance with the EU funding sanctions through the flagging mechanisms embedded in its accrual-based accounting system (**ABAC**)[17]. ABAC is currently being phased out and progressively replaced by **SUMMA**, which is to be rolled out for the Commission in early 2024. The Early Detection and Exclusion Mechanism (**EDES**) is the Commission's main tool for flagging economic operators of concern.

There is no centralised system for funds managed jointly by the Commission and the Member States under **shared management**; for cohesion policy, for example, Germany and Italy have 30 separate reporting systems, and some countries have no consolidated reporting system at all. Data on EU funding under shared management is therefore scattered across multiple platforms, making analysis of recipients difficult[18].

In the case of **CAP subsidies**, the European Court of Auditors has drawn attention to the fact that the Commission still manually analyses the data it collects from Member States using spreadsheets[19]. Cases of land grabbing have highlighted the need for the use of big data techniques in this area to prevent CAP

[14] European Parliament resolution of 15 February 2023 on one year of Russia's invasion and war of aggression against Ukraine (Texts adopted, P9_TA(2023)0056.

[15] Financial Transparency System, European Commission.

[16] Study for the CONT Committee, 'Transparency and accountability of EU funding for NGOs active in EU policy areas within EU territory', Policy Department D for Budgetary Affairs, Authors: Blomeyer and Sanz: Roderick Ackermann, Margarita Sanz, Michael Hammer, Veronika Kubeková, Kylie Jabjiniak, Ellen Hietsch, September 2023.

[17] Answer to Question for Written Answer P-001803/2022 given by Commissioner Hahn on behalf of the European Commission on 13 September 2022.

[18] Study for the CONT Committee, 'The Largest 50 Beneficiaries in each EU Member State of CAP and Cohesion Funds', Policy Department for Budgetary Affairs, Authors: Willem Pieter De Groen, Roberto Musmeci, Damir Gojsic, Jorge Nunez and Daina Belicka, May 2021.

[19] European Court of Auditors Special Report 16/2022 entitled 'Data in the Common Agricultural Policy: Unrealised potential of big data for policy evaluations'.

subsidies from falling into the hands of those subject to sanctions[20]. From a legal perspective, what would happen should a recipient of CAP subsidies, which are allocated according to certain criteria, be found to have ties to an individual or entity on the sanctions list is a point worth further attention.

The **ARACHNE risk-scoring tool** is currently available to all Member States for funding in shared management, such as the ESF and the ERDF, but is voluntary. Though ARACHNE does include data on sanctions lists received from regulatory and governmental managing authorities, this data comes from external sources and may in practice only be used for audit purposes after funding has already been awarded. Managing authorities have cited data collection (administrative burden), accuracy issues (high number of false positives) and legislative barriers, in particular with regard to national data protection, as undermining the usefulness of the tool[21]. In December 2022, the Commission stated that for 2021-2027, data on contractors and on beneficial owners of beneficiaries and contractors would be added to the list of mandatory data to be uploaded in ARACHNE[22].

In its proposal for the recast of the Financial Regulation[23], however, the Commission proposed making the use of '**a single integrated IT system for data-mining and risk-scoring**' compulsory, including under direct and indirect management. The tool is expected to build on, but be distinct from, ARACHNE. In their explanatory statement of 4 May 2023, the European Parliament rapporteurs for the recast of the Financial Regulation[24] proposed going much further with the compulsory centralisation of information within the proposed new system, allowing for the electronic recording and storage of data on the recipients of Union funding, including beneficial owners. They also highlighted that 'the transition period proposed by the Commission before the use of the new system is made mandatory is disproportionately long'.

2.2 EU public procurement

2.2.1 Tenders Electronic Daily

The Commission has an overview of public procurement in the EU in the form of Tenders Electronic Daily (TED). As a general rule, tenders for public contracts that fall under the scope of the Public Procurement Directives[25] must be published in the TED.

However, the TED's utility as a monitoring platform is currently undermined by missing and inaccurate data, in turn the result of a lack of uniform rules on what procurement data needs to be published at Member State level and in what format. The structure of the TED platform, which is for publication, not data analysis, also hinders proper oversight[26]. New e-forms[27], mandatory in the Member States as of June 2023, should help to standardise procurement data collection on the TED.

2.2.2 Guidance for contracting authorities

The Commission has produced **public procurement FAQs**[28] designed to support public buyers in the EU in implementing the sanctions and ensure that no one sanctioned under Article 5(k) of the EU-Russia Sanctions

[20] New York Times, 'The Money Farmers: How Oligarchs and Populists Milk the E.U. for Millions', 3 November 2019; Study for the AGRI Committee, 'Extent of Farmland Grabbing in the EU', Policy Department B: Structural and Cohesion Policies, Authors: Transnational Institute: Sylvia Kay, Jonathan Peuch, Jennifer Franco, May 2015.

[21] Briefing for the CONT Committee, 'Instruments and Tools at EU Level and Developed at Member State Level to Prevent and Tackle Fraud - ARACHNE', Adam Nugent and András Schwarcz, Policy Department for Budgetary Affairs, October 2022.

[22] Written questions in follow-up to CONT Committee public hearing of 5 December 2022.

[23] Commission proposal of 15 May 2022 for a regulation of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (recast), COM(2022)0223.

[24] European Parliament position of 4 May 2023 on the proposal for a regulation of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (recast).

[25] Directives 2014/23/EU, 2014/24/EU, 2014/25/EU, and 2009/81/EC.

[26] In-depth analysis for the CONT Committee, 'Gaps and Errors in the TED database', Policy Department for Budgetary Affairs, Authors: Blomeyer & Sanz - Roderick Ackermann, Margarita Sanz, Antonio Sanz, February 2019; Tenders.Guru, 'Recommendations for EU Procurement', June 2021.

[27] Commission Implementing Regulation (EU) 2019/1780 of 23 September 2019 establishing standard forms for the publication of notices in the field of public procurement and repealing Implementing Regulation (EU) 2015/1986 (eForms), OJ L 272, 25.10.2019, p. 7.

[28] Commission FAQs on sanctions in the context of public procurement, 26 August 2022.

Regulation is awarded public procurement contracts, whether directly or indirectly. However, the FAQs themselves are not legally binding and cannot be seen to replace the applicable legal provisions. It falls to contracting authorities to interpret individual cases.

For ongoing and future contracts, public buyers are advised to ask contractors to provide a **declaration of honour** stipulating that there is no Russian involvement in the contracts. The EU institutions themselves request such a declaration in their public procurement activities. In addition, they have produced specific internal guidance to ensure that procurement procedures managed by their services are implemented in accordance with the EU-Russia sanctions framework.

On 7 September 2023, the Commission published guidance[29] to help European operators identify and assess sanctions circumvention risks and perform **appropriate due diligence**. The guidance encourages operators to be attentive to circumvention red flags when entering into a new business relationship, and to screen new business partners should red flags be identified.

The approach to public procurement sanctions enforcement is therefore necessarily **risk assessment-based**. The Commission FAQs state that, in the case of doubt, public buyers should request additional information, explanations or documents from prospective tenderers. National guidelines vary: the French Ministry of the Economy and Finance, for example, published a Fiche Technique[30] on 15 April 2022 recommending that contracting authorities check specialised company databases to verify information provided by companies and to trace any ties, whether direct or indirect, to individuals and companies subject to sanctions. However, tracing final beneficiaries in this manner is resource-intensive and likely to be beyond the means of most public authorities, and of the Commission in the case of direct and indirect management.

2.3 Beneficial ownership

Data on direct beneficiaries is not sufficient to determine ties to individuals and companies subject to the sanctions on Russia. To trace where EU funds really end up, identifying the beneficial owner, or real person who ultimately owns, controls or benefits from a company or trust fund and the profits it makes, is essential[31].

The 5th Anti-Money Laundering Directive[32] requires the collection of data on beneficial ownership provided by direct beneficiaries in central registers[33] maintained at national level, to which contracting authorities have access. In theory, this should enable contracting authorities to check who ultimately benefits from tenders before awarding them. However, the national beneficial ownership registers are not always sufficient to determine the final beneficiaries of EU funding. There are several reasons for this:

- **Complex ownership structures** – tracing final beneficiaries is complicated and often impossible, since those subject to the funding sanctions use anonymised trust funds, shell companies, tax-haven based intermediaries and other methods to obscure their involvement;
- Member States use varying register systems with different degrees of transparency and there is **no common central database** using unique personal and corporate identifiers;
- **Inconsistent and inaccurate reporting** – different transliterations of Cyrillic and spellings of names, for example, and non-compliance with reporting requirements could impede the identification process;

[29] European Commission, 'Guidance for EU operators: Implementing enhanced due diligence to shield against Russia sanctions circumvention', 2023.
[30] Ministère de l'Économie et des Finances, 'Fiche technique : Mise en œuvre de l'interdiction d'attribuer ou d'exécuter des contrats de la commande publique avec la Russie', 15 April 2022.
[31] Article 3(6) of the 4th Anti-Money Laundering Directive.
[32] Article 30 of the 5th Anti-Money Laundering Directive.
[33] European e-Justice Portal, Business registers in EU countries.

- **Legislative loopholes** enable entities registered in other countries to bypass the requirement to provide beneficial ownership data;
- The current **definition of beneficial owner** allows for arbitrary decisions about what can be left out of beneficial ownership declarations[34]; in addition, there is no requirement for those owning fewer than 25% of shares to appear in the national registers[35].

Member States differ considerably in how their registers have been implemented and how accessible they are, with some registers subject to a fee. The **Beneficial Ownership Registers Interconnection System** (BORIS)[36] is a decentralised platform that connects the national beneficial ownership registers in a searchable database. While only 10 Member States currently participate, BORIS will gradually connect all the Member States' registers, plus those of Iceland, Liechtenstein and Norway. The majority of records on BORIS are still subject to a fee, however, and records often don't show full ownership chains[37].

Even supposing that public authorities at EU, national, regional and local level always check the beneficial ownership registers before deciding to award a contract, ties to sanctioned individuals may only be proven through intensive investigative methods, which public entities are unlikely to perform. Whether and to what extent contracting authorities check the beneficial ownership registers before awarding a contract is a point for further analysis.

2.3.1 Societal scrutiny of beneficial ownership

The media and civil society play an invaluable role in uncovering corruption and enforcing sanctions against Russian oligarchs. On 22 November 2022, however, the Court of Justice of the European Union (CJEU) ruled that, for reasons of data protection, the public would no longer have unrestricted access to the identities of beneficial owners as provided for in AMLD5, resulting in the closure of publicly accessible beneficial ownership registers all across the EU[38]. The forthcoming AMLD6[39] should reflect the CJEU's decision, while looking for ways to provide access to such data and tightening up loopholes. In its position at first reading[40] on the AMLD6 proposal, the European Parliament states that the directive should define 'a minimum and non-exhaustive list of persons that have a legitimate interest in accessing information on beneficial owners', and that the definition of who has 'legitimate interest' in accessing such information should be interpreted broadly.

3. EU sanctions enforcement

3.1 European Parliament's position

In its resolution of 7 July 2022 on the protection of the EU's financial interests[41], the European Parliament recognised the need for a harmonised system to ensure that those subject to sanctions cannot succeed in remaining under the radar. It reiterated 'its urgent call for the Commission to establish an EU-wide, mandatory, integrated and interoperable system building on, but not limited to, existing tools such as ARACHNE and EDES' and recalled that 'this system must contain information on all EU co-financed projects, beneficiaries and beneficial owners, and allow for the aggregation of all individual amounts concerning the same beneficiary or beneficial owner'.

34 International Tax Review, 'The Italian Supreme Court rules on the definition of beneficial owner' 26 August 2020.
35 Transparency International, 'What the global standard on company ownership should look like: five key fixes', 6 August 2021.
36 European e-Justice Portal, Beneficial Ownership Registers Interconnection System.
37 Open ownership, 'The value of connecting beneficial ownership data across the European Union', 27 September 2022.
38 Judgment of the Court of Justice in Joined Cases C-37/20, C-601/20, Luxembourg Business Registers.
39 Commission proposal of 20 July 2021 for a directive of the European Parliament and of the Council on the mechanisms to be put in place by the Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849 (COM(2021)0423).
40 European Parliament position of 14 April 2023 on the proposal for a directive of the European Parliament and of the Council on the mechanisms to be put in place by the Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849.
41 European Parliament resolution of 7 July 2022 on the protection of the European Union's financial interests – combating fraud – annual report 2020 (Texts adopted, P9_TA(2022)0300).

On 17 October 2023, Parliament held a plenary debate on the effectiveness of EU sanctions on Russia. During the debate, Council and Commission representatives highlighted that sanctions had indeed been effective thus far. MEPs, however, stressed that the sanctions imposed so far had been insufficient and that more needed to be done to close loopholes.

3.2 Responsibility for sanctions enforcement

The Commission is responsible for monitoring the enforcement of EU sanctions across the Union and ensuring their harmonised application[42]. However, the ultimate responsibility for the correct application and enforcement of EU sanctions rests with the Member States competent authorities; it is their job to identify breaches and apply the appropriate penalties[43]. The Commission closely monitors credible allegations of violations, including in the media, and decides whether to raise cases with the national competent authorities.

3.3 Sanctions violation – a Eurocrime

On 28 November 2020, the Council adopted a decision[44] to make breaching EU sanctions an **EU crime** under Article 83(1) of the TFEU. This represents a major step towards harmonising EU sanctions enforcement across the Member States and dissuading attempts by sanctioned persons to continue accessing their assets and EU funding.

On 2 December 2022, the Commission presented its proposal[45] for a directive containing minimum rules concerning the definition of criminal offences and penalties for the violation of EU restrictive measures. The objectives of the proposal are to:

- approximate definitions of criminal offences related to the violation of Union restrictive measures;
- ensure effective, dissuasive and proportionate penalty types and levels for criminal offences related to the violation of Union restrictive measures;
- foster cross-border investigation and prosecution; and
- improve the operational effectiveness of national enforcement chains to foster investigations, prosecutions and sanctioning.

On 9 November 2022, the European Chief Prosecutor, Laura Kövesi delivered a speech in which she called for the EPPO's competences to be extended to the prosecution of EU sanctions violations in order to more effectively enforce EU rules on sanctions against Russia[46].

3.4 EU Sanctions Envoy

On 13 December 2022, the Commission appointed David O'Sullivan in the new position of International Special Envoy for the Implementation of EU Sanctions. His role is to 'ensure continuous, high-level discussions with third countries to avoid the evasion or even the circumvention of the unprecedented restrictive measures that have been imposed on Russia since the start of its war against Ukraine'[47].

42 Commission FAQs on restrictive measures (sanctions), 26 February 2022.
43 Articles 63(2) and 36(3) of the Financial Regulation; Article 8 of the EU-Russia Sanctions Regulation.
44 Council decision of 30 June 2022 on identifying the violation of Union restrictive measures as an area of crime that meets the criteria specified in Article 83(1) of the Treaty on the Functioning of the European Union.
45 Commission proposal of 2 December 2022 for a directive of the European Parliament and of the Council on the definition of criminal offences and penalties for the violation of Union restrictive measures (COM(2022)0684).
46 Speech of the European Chief Prosecutor, Laura Kövesi, at the Legal Affairs Committee of the Bundestag, 9 November 2022.
47 Commission representation in Ireland, 'EU appoints David O'Sullivan as International Special Envoy for the Implementation of EU Sanctions', 13 December 2022.

3.5 State of play of EU initiatives

On 19 January 2021, the Commission published a communication[48] entitled 'The European economic and financial system: fostering openness, strength and resilience' in which it put forward proposals for improving the implementation and enforcement of EU sanctions regimes, including:

- A **Sanctions Information Exchange Repository** – a database for the prompt reporting and exchange of information between Member States and the Commission on the implementation and enforcement of sanctions set to be developed in 2021. The state of development of this tool is as yet unclear.
- Strengthening cooperation on sanctions, in particular with G7 partners – through the **'Freeze and Seize' Task Force**[49] set up in March 2022, the Commission is now working at international level alongside the 'Russian Elites, Proxies, and Oligarchs (REPO)' Task Force, under which the EU operates together with the G7 countries, as well as Australia, to ensure harmonised international sanctions enforcement.
- The **EU Sanctions Whistleblower Tool**[50] – a dedicated tool has been set up to facilitate anonymous reporting of breaches of EU sanctions and enable the Commission to monitor possible violations of sanctions law by Member States. The system provides confidentiality guarantees to address the potential implications for those who report illicit activities.
- Working with Member States to create a **single contact point** for sanctions enforcement (state of play undetermined).

The Commission's proposals stopped short of the establishment of an **EU-wide sanctions enforcement body**, but Commissioner Mairead McGuiness has since expressed support for the creation of such a body to help Member States implement sanctions and ensure more consistent oversight and enforcement[51].

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48 Commission communication of 19 January 2021 on the European economic and financial system: fostering openness, strength and resilience (COM(2021)0032).
49 Commission press release, 'Enforcing sanctions against listed Russian and Belarussian oligarchs: Commission's Freeze and Seize Task Force steps up work with international partners', 17 March 2022.
50 EU Sanctions Whistleblower Tool, European Commission.
51 Financial Times, 'Brussels pushes for tougher sanctions enforcement via EU-wide body', 3 July 2022.

BIOGRAPHIES OF SPEAKERS

Elina Ribakova
Non-resident fellow at Bruegel

Elina Ribakova has been a nonresident senior fellow at the Peterson Institute for International Economics since April 2023. She is also a nonresident fellow at Bruegel and a director of the International Affairs Program and vice president for foreign policy at the Kyiv School of Economics. Her research focuses on global markets, economic statecraft, and economic sovereignty. She has been a senior adjunct fellow at the Center for a New American Security (2020–23) and a research fellow at the London School of Economics (2015–17).

Ribakova has over 25 years of experience with financial markets and research. She has held several senior level roles, including deputy chief economist at the Institute of International Finance in Washington, managing director and head of Europe, Middle East and Africa (EMEA) Research at Deutsche Bank in London, leadership positions at Amundi (Pioneer) Asset Management, and director and chief economist for Russia and the Commonwealth for Independent States (CIS) at Citigroup.

Prior to that, Ribakova was an economist at the International Monetary Fund in Washington (1999–2008) working on financial stability, macroeconomic policy design for commodity-exporting countries, and fiscal policy.

Ribakova is a seasoned public speaker. She has participated in and led multiple panels with leading academics, policymakers, and C-level executives. She frequently collaborates with CNN, BBC, Bloomberg, CNBC, and NPR. She is often quoted by and contributes op-eds to several global media, including the New York Times, Wall Street Journal, Financial Times, Washington Post, The Guardian, Le Monde, El Pais, and several other media outlets.

Ribakova holds a master of science degree in economics from the University of Warwick (1999), where she was awarded the Shiv Nath prize for outstanding academic performance, and a master of science degree in data science from the University of Virginia (May 2023).

Pawel Wasik
Chair of the Eurojust Economic Crime Working Group and Assistant to the National Member for Poland

Paweł Wąsik is Public Prosecutor from Poland and Assistant to the National Member for Poland at Eurojust. He worked on cases of economic and financial crime and organised crime groups at the Department of Economic Crimes. He has been involved in international cooperation in criminal matters, including cases involving assets recovery and joint investigation teams.

He is a lecturer on criminal law and international cooperation in criminal matters to, among others, the National School of Judiciary and Public Prosecution in Kraków, the European Judicial Training Network (EJTN) and University of Strasbourg – European College of Financial Investigations and Analysis of Financial Crimes (CEIFAC).

He is also a Chair of Economic Crime Team in Eurojust and contact point for Asset Recovery and CARIN - Camden Assets Recovery Interagency Network.

Georgios Pavlidis
Academic expert in International and European Economic Law

Dr. Georgios Pavlidis a holder of a UNESCO Chair ('Human Development, Security and the Fight against Transnational Crime'), as well as a Jean Monnet Chair ('Tracing Criminal Assets in the EU'), funded by the EU. He is Associate Professor of International and EU Law at the School of Law of NUP Cyprus. He has obtained his PhD in Law from the University of Geneva, having completed his postgraduate studies in the US and the UK (LLM in International and Comparative Law, SMU Dallas, LLM in International Economic Law, University of Warwick).

He has worked as evaluator in EU-funded programs (MSCA COFUND programs, EIT-HEI, COST Actions, NGI Enrichers Program, etc.). He has extensive experience as external expert for consulting firms and law firms in the US, UK, Switzerland and Belgium and as national expert in the evaluation of EU instruments.

He is a certified AML Compliance Officer (CySEC) and he participates as AML Expert in the Digital Currency Global Initiative (Stanford University/ITU), the Managerial Committee of the COST Project «Globalization, Illicit Trade, Sustainability and Security» (funded by the EU), the Egmont Centre of FIU Excellence and Leadership (ECOFEL) in Canada, etc. His research interests include the fight against money laundering, the regulation of financial markets, digital finance, and the deployment of AI in these fields.

Maira Martini
Transparency International

Maíra Martini is the Head of Policy and Advocacy at Transparency International Secretariat in Berlin (TI-S) and an expert on corrupt money flows. She has been leading the TI movement's work on illicit financial flows, anti-money laundering, and beneficial ownership transparency. She is the author of several TI reports on these issues.

Maíra is part of the Global Anti-Corruption Consortium, a ground-breaking partnership with investigative journalists from the Organized Crime and Corruption Reporting Project. She is also on the Steering Groups of OpenOwnership and the Anti-Corruption Data Collective.

Maira is a lawyer, a certified anti-money laundering specialist and holds a Masters in public policy from the Hertie School of Governance in Berlin.

PRESENTATIONS

Presentation by Elina Ribakova
Bruegel

CURRENT TRENDS IN SANCTIONS CIRCUMVENTION AND POLICY RESPONSES

NOVEMBER 2023

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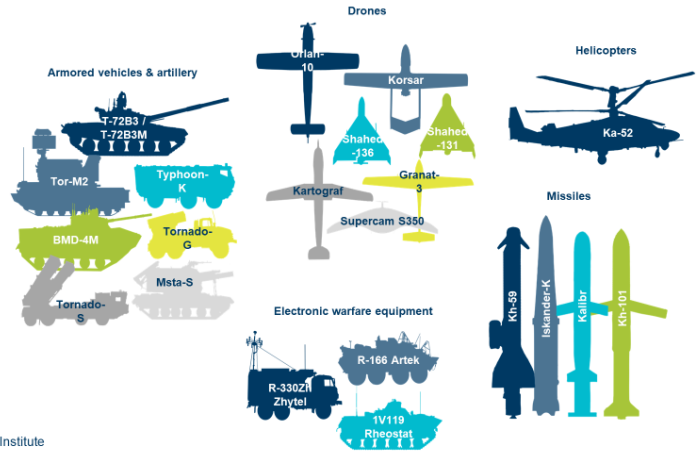
ASSESSING EXPORT CONTROLS: RUSSIA CONTINUES TO HAVE ACCESS TO CRITICAL TECHNOLOGY

Finding #1: Western Parts on the Battlefield

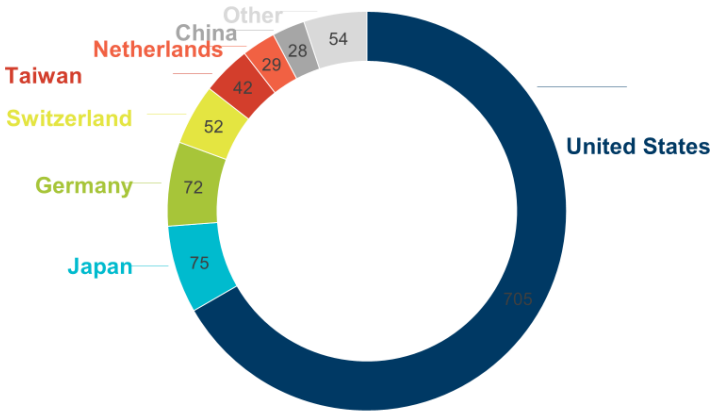
Russian weapons dismantled by Ukrainian authorities



Source: Ukrainian authorities, KSE Institute

Finding #1: Western Parts on the Battlefield

Western components found in Russian military equipment by producer

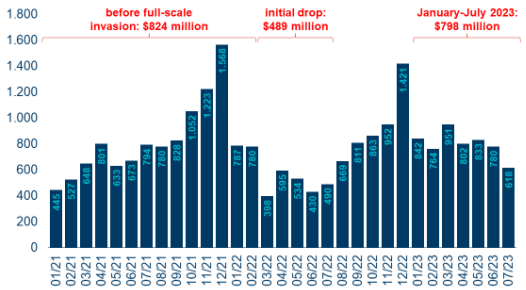


Source: Ukrainian authorities, KSE Institute

Finding #2: Continued Access

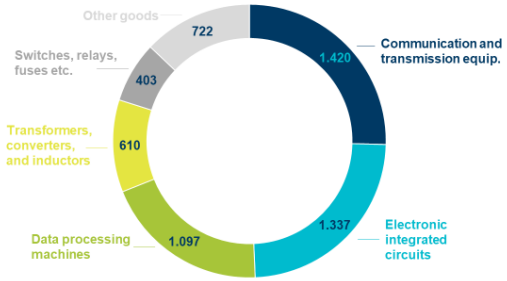
- Imports of high-priority battlefield items have recovered from initial drop last spring
- Altogether, Russia has imported **$5.6 billion** in these goods in January-July 2023
- Electronic integrated circuits account for **$1.3 billion** or close to **25%** of the total

Russian imports of high-priority battlefield items, in $ million



Source: Russian customs, KSE Institute

Composition of imports in January-July 2023, in $ million

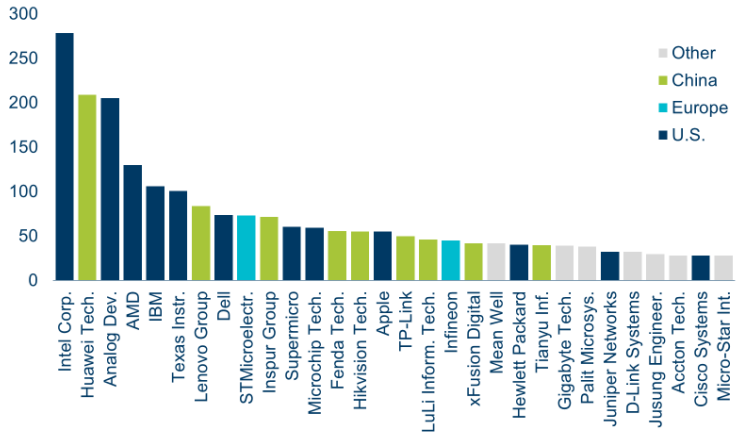


Source: Russian customs, KSE Institute

5

Finding #3: Export Controls Challenge (2023 data)

Producers of Russian imports in January-July 2023, in $ million



Source: Russian customs, KSE Institute

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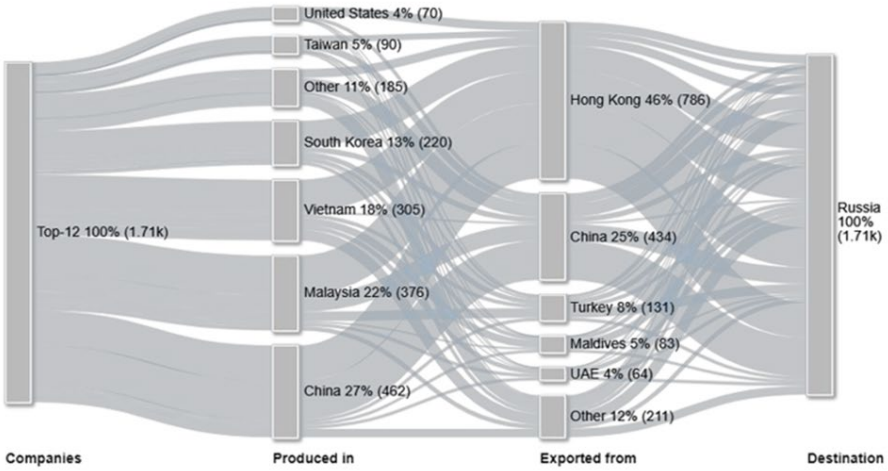
Finding #3: Export Controls Challenge



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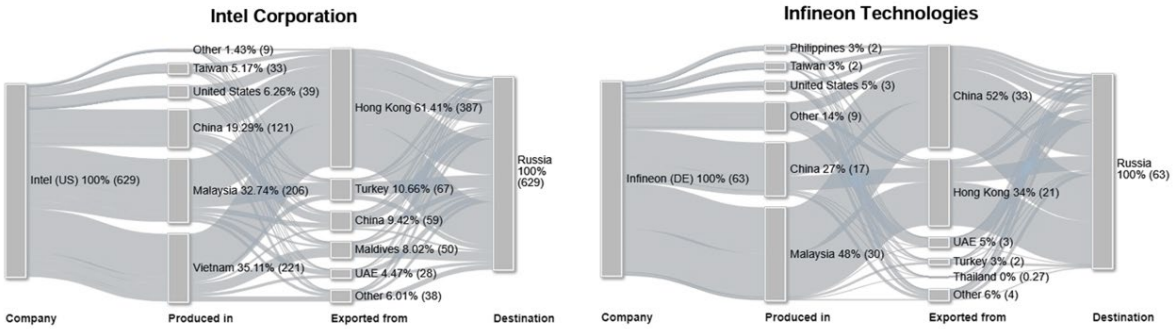
Finding #3: Export Controls Challenge



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Policy Recommendations

Strengthening enforcement:

- Build sufficient capacities to reflect growing importance/magnitude of export controls
- Demonstrate willingness/ability to investigate transactions and impose meaningful penalties
- Implement stricter liability, responsibility for corporates who violate export controls
- Broaden focus to investigate/penalize producers instead of only intermediaries
- Sanction third-country entities that are engaged in export controls violations
- Link financial and corporate sectors' efforts

Improving implementation:

- Consider broadening categories for export controls to simplify monitoring, close loopholes
- Set up systems to track physical movements of high-priority items (e.g., semiconductors)

Engaging private sector:

- Give guidance to major producers
- Support financial institutions' efforts
- Provide technical assistance to SMEs

9

Selected publications:

- On price cap: https://kse.ua/about-the-school/news/russia-macro-update-the-price-cap-fundamentally-works/
- Russia Chartbook: https://kse.ua/about-the-school/news/kse-institute-s-russia-chartbook-macroeconomic-situation-shows-signs-of-improvement-sanctions-need-to-be-tightened/
- Russian Oil Tracker: https://kse.ua/about-the-school/news/september-issue-of-the-russian-oil-tracker-by-kse-institute/
- Full report on dual-use: https://kse.ua/about-the-school/news/kse-institute-yermak-mcfaul-sanctions-working-group-present-a-joint-study-on-russia-s-military-capacity-and-the-role-of-imported-components/

10

Presentation by Paweł Wąsik Chair of the Eurojust Economic Crime Working Group and Assistant to the National Member for Poland

EUROJUST

Circumventing sanctions – a 'Eurocrime'
Eurojust's perspective

Preventing EU funds from reaching sanctioned individuals or entities
European Parliament, Brussels – 6 November 2023

Background

Violations of sanctions can amount to
- **criminal and administrative offence;**
- **criminal offence only;**
- **administrative offence.**

Types and level of penalties differ substantially among MS

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Background

- **Member States are responsible for the implementation and enforcement** of EU sanctions.
- The task of **conducting investigations** into potential non-compliance cases falls within the purview of Member States and competent national authorities.
- The responsibility of EU Member States is therefore trifold: they must
  - adopt internal measures imposing penalties;
  - take concrete steps to enforce such measures;
  - ensure that the measures taken are sufficiently effective, proportionate and dissuasive, in line with the case law of the EU Court of Justice
- **Lack of a common EU approach to sanctions' violations**

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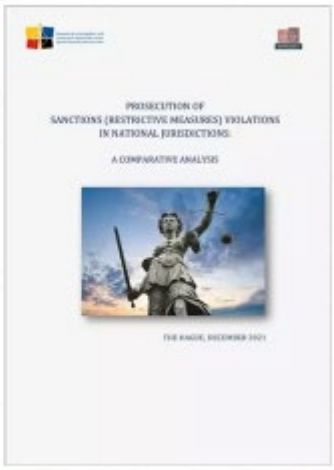
GENOCIDE NETWORK REPORT

Prosecution of sanctions (restrictive measures) violations in national jurisdictions: a comparative analysis

https://www.eurojust.europa.eu/publication/expert-report-prosecution-sanctions-restrictive-measures-violations-national-jurisdictions



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Polish example
Criminal sanctions
Article 33 of Section 6 'Penal provisions, fines' of the Trading of Goods, Technology and Services of Strategic Importance to State Security Act holds that:
– Every person who engages in trade without a licence or violates the conditions set out in the licence shall be subject to imprisonment from 1 to 10 years.
– If the perpetrator who engages in trade in violation of conditions set out in the licence, does so unintentionally and provided that he restores the status referred to in Article 31 paragraph 1, he is subject to a fine, restriction of liberty or imprisonment for up to two years.
Administrative sanctions
The financial penalty shall be imposed up to the level of twofold amount of the benefit gained or the loss avoided by the obligated institution as a result of the violation, or – in the case where determining of such amount of this benefit or loss is impossible – up to the amount equivalent to EUR 1 000 000.
The financial penalty shall be also imposed on obligated institutions referred to in Article 2(1)(1-5), (7-11) (24) and (25):
– in the case of a natural person – up to the level of PLN 20 868 500;
– in the case of a legal person or an organisational unit without legal personality – up to the amount equivalent to EUR 5 000 000 or up to the level of 10% of the turnover recognised in the recent approved financial statements for the financial year, or in the recent consolidated financial statements for the financial year, in the case of institutions covered by the consolidated financial statements of a capital group.
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Legislative steps
Council Decision (EU) 2022/2332 on identifying the violation of Union restrictive measures as an area of crime that meets the criteria specified in Article 83(1) TFEU [28 November 2022]
- particularly serious crimes
- cross-border dimension
Proposal for a Directive on the definition of criminal offences and penalties for the violation of Union restrictive measures [2 December 2022]
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Definition of criminal offences
Harmonisation of the definitions of nine criminal offences, including
- Violations of asset freeze measures
- Violations of travel bans
- Violations of economic and financial sectoral measures and arm embargoes
- Circumvention of EU sanctions, including by concealing funds/economic resources or in breach of reporting obligations under EU sanctions
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Penalties
For natural persons
Imprisonment
- minimum maximum of one or five years (threshold of EUR 100 000)
- additional penalties, including fines
For legal persons
Mandatory: fines (based on total worldwide turnover); exclusion from entitlement to public benefits or aid; exclusion from public funding, grants and concessions
Optional: withdrawal of permits, placing under judicial supervision etc.
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Confiscation

- The new [**Directive on asset recovery and confiscation**] (currently under negotiation) applies to '*the violation of Union restrictive measures*'
- In addition, **this proposal** clarifies the notion of **'proceeds' of crime** in this context - when a designated person commits or participates in circumvention offences → **funds and economic resources subject to sanctions are to be considered as *proceeds* of crime and could be confiscated**

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Eurojust Report on Money Laundering

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Practical implications and opportunities

- An amendment to Directive (EU) 2018/1673 on combatting money laundering by criminal law should ensure that the violation of Union restrictive measures will be considered a **predicate offence for money laundering** according to that Directive.
- No need for a **dual criminality test** - facilitated procedure for the execution of EIOs, EAWs, FOs and cooperation under the JIT or under the EPPO if it comes to that.

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Role of Eurojust

- Cooperation between Member States' authorities, the Commission, Europol, Eurojust and the European Public Prosecutor's Office **within respective competences**
- Technical and operational assistance as appropriate to facilitate the coordination of investigations and prosecutions by competent authorities

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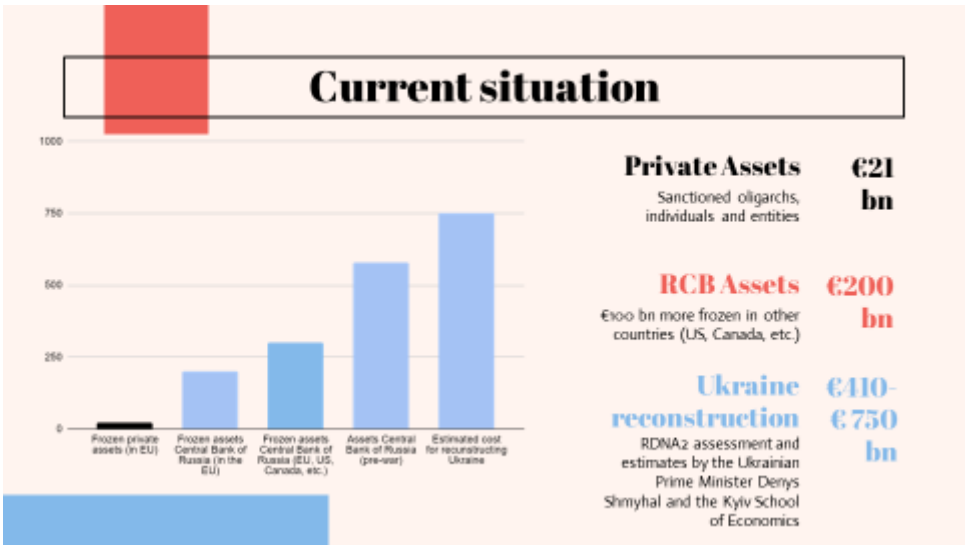
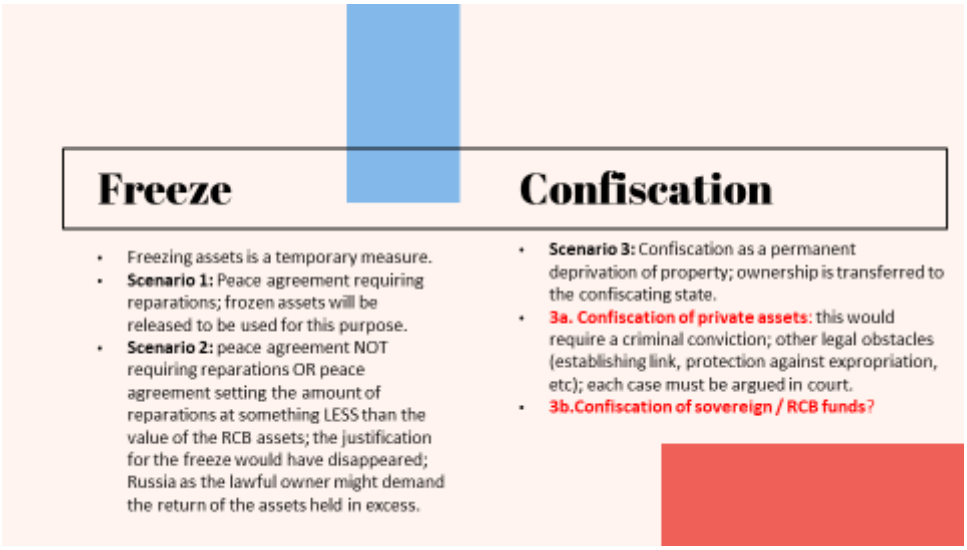
Presentation by Georgios Pavlidis Academic expert in International and European Economic Law

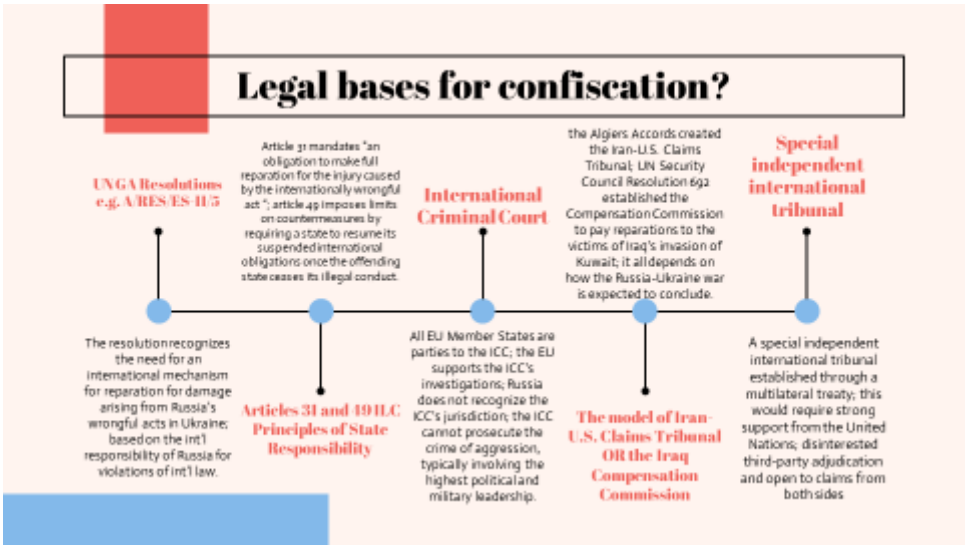

Tracing, freezing and confiscating assets
The case of sanctions against Russia
Dr. Georgios Pavlidis
UNESCO Chair & Jean Monnet Chair, NUP Cyprus
Workshop on preventing EU funds from reaching sanctioned individuals or entities organised by the Policy Department on Budgetary Affairs for the Committee on Budgetary Control
European Parliament, Brussels, 6 November 2023


Current situation
1000
750
500
250
0
Frozen private assets (in EU)
Frozen assets Central Bank of Russia (in the EU)
Frozen assets Central Bank of Russia (EU, US, Canada, etc.)
Assets Central Bank of Russia (pre-war)
Estimated cost for reconstructing Ukraine
Private Assets
Sanctioned oligarchs, individuals and entities
€21 bn
RCB Assets
€100 bn more frozen in other countries (US, Canada, etc.)
€200 bn
Ukraine reconstruction
RDNA2 assessment and estimates by the Ukrainian Prime Minister Denys Shmyhal and the Kyiv School of Economics
€410-€750 bn


Tracing and Freezing Russian Assets
The European Commission set up the Freeze and Seize Task Force (March 2022)
The US set up its own Task Force, known as KleptoCapture
There is also the Russian Elites, Proxies, and Oligarchs (REPO) Task Force by the European Commission, the US, Australia, Canada, France, Germany, Italy, Japan and the UK
New powers to the Asset Recovery Offices (Proposal for a Directive on asset recovery and confiscation) to trace and identify assets and facilitate cross-border cooperation.
Deploying the AML/CFT tools that are already available
New tools? The Swiss "Lex Duvalier" model?


Freeze
Freezing assets is a temporary measure.
Scenario 1: Peace agreement requiring reparations; frozen assets will be released to be used for this purpose.
Scenario 2: peace agreement NOT requiring reparations OR peace agreement setting the amount of reparations at something LESS than the value of the RCB assets; the justification for the freeze would have disappeared; Russia as the lawful owner might demand the return of the assets held in excess.
Confiscation
Scenario 3: Confiscation as a permanent deprivation of property; ownership is transferred to the confiscating state.
3a. Confiscation of private assets: this would require a criminal conviction; other legal obstacles (establishing link, protection against expropriation, etc); each case must be argued in court.
3b.Confiscation of sovereign / RCB funds?


Sovereign Immunity
RCB foreign reserves are generally considered to be covered by immunity under int'l law. They are immune from "attachment, arrest, and execution". Confiscating Russian assets under international law typically requires:
a UN Security Council vote, which requires Russia's agreement.
an ICJ judgment, which requires Russia's agreement (see also Russia's defiance of the ICJ provisional orders).
a post-war settlement, which requires Russia's agreement.


Legal bases for confiscation?
UN GA Resolutions e.g. A/RES/ES-11/5
The resolution recognizes the need for an international mechanism for reparation for damage arising from Russia's wrongful acts in Ukraine; based on the int'l responsibility of Russia for violations of int'l law.
Article 31 mandates "an obligation to make full reparation for the injury caused by the internationally wrongful act"; article 49 imposes limits on countermeasures by requiring a state to resume its suspended international obligations once the offending state ceases its illegal conduct.
Articles 31 and 49 ILC Principles of State Responsibility
International Criminal Court
All EU Member States are parties to the ICC; the EU supports the ICC's investigations; Russia does not recognize the ICC's jurisdiction; the ICC cannot prosecute the crime of aggression, typically involving the highest political and military leadership.
the Algiers Accords created the Iran-U.S. Claims Tribunal; UN Security Council Resolution 692 established the Compensation Commission to pay reparations to the victims of Iraq's invasion of Kuwait; it all depends on how the Russia-Ukraine war is expected to conclude.
The model of Iran-U.S. Claims Tribunal OR the Iraq Compensation Commission
Special independent international tribunal
A special independent international tribunal established through a multilateral treaty; this would require strong support from the United Nations; disinterested third-party adjudication and open to claims from both sides

Investing Russian Assets

	Description
Step 1	keeping profits from assets separate in financial institutions' balance sheets
Step 2	investing assets in "liquid, highly-rated assets" with short maturities; a structure is necessary to manage the frozen public funds; investing in equity may offer higher returns but carries greater risks, potentially resulting in losses
Step 3	taxing (not confiscating) these revenues and transferring them to the EU budget for the benefit of funding Ukraine's reconstruction

My recommendation:
The 'Occam's razor'

Instead of outright confiscation, frozen assets can be utilized as **leverage** to extract concessions from Russia. More specifically:

1. As long as the conflict continues, the assets can **remain frozen** (no action needed); their profits can be invested and taxed (see above)
2. When the conflict concludes, countries that have imposed sanctions could make the termination of sanctions and the **return of assets conditional on Russia agreeing to make reparations**; otherwise, the assets will remain frozen.
3. Countries can contribute to a Ukraine's reconstruction and, after the conflict, condition their own payments on a **refund** from Russia. **Russia's assets would function as security against reimbursement by Russia of the money paid for Ukrainian reconstruction**
4. This would not require a UNSC resolution or any international legal mechanism; keep same legal basis: 215 TFEU.

Based on the proposals of Prof. Paul Stephan


Thank you
Do you have any questions?
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My research is available at:
https://www.researchgate.net/profile/George-Pavlidis-4
https://nup.academia.edu/GeorgiosPavlidis

Presentation by Maíra Martini
Head of Policy and Advocacy at Transparency International


TRANSPARENCY INTERNATIONAL
the global coalition against corruption
TRACING FINAL BENEFICIARIES OF EU FUNDS
The importance of beneficial ownership data
Maíra Martini, Transparency International
@mairarmartini
transparency.org
@anticorruption


Public register (free & open data)
Public register (free)
Public register (with fee)
Public register (with fee, provisional)
Private register
Private register (provisional)
No register
Access restricted to nationals/ EU citizens with e-identification
Free access with e-identification
Finland
Sweden
Estonia
Latvia
Denmark
Lithuania
Ireland
Netherlands
Poland
Belgium
Germany
Luxembourg
Czechia
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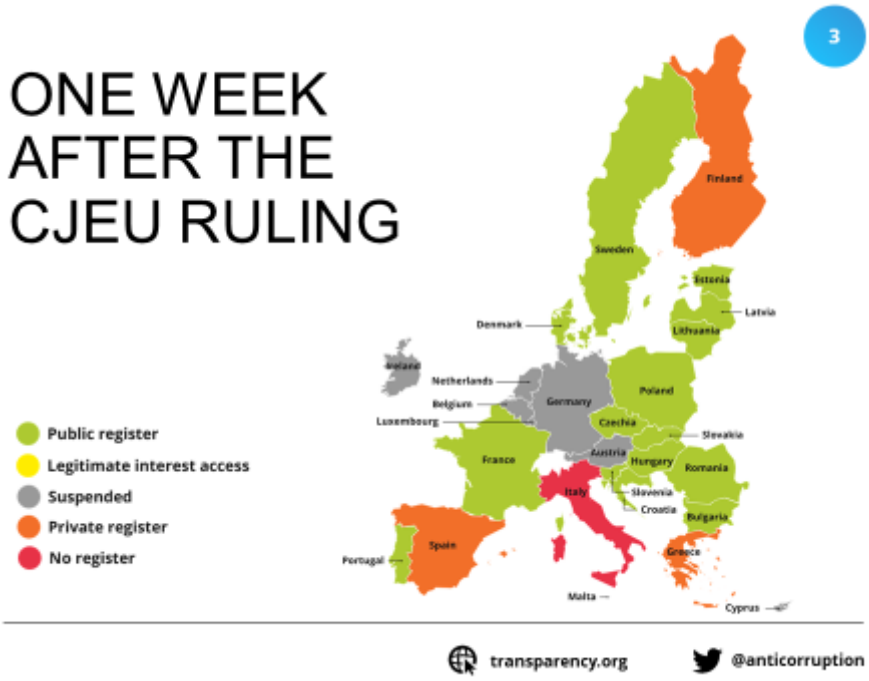
3
ONE WEEK AFTER THE CJEU RULING
Public register
Legitimate interest access
Suspended
Private register
No register
Finland
Sweden
Estonia
Latvia
Lithuania
Denmark
Ireland
Netherlands
Belgium
Luxembourg
Germany
Poland
Czechia
Slovakia
France
Austria
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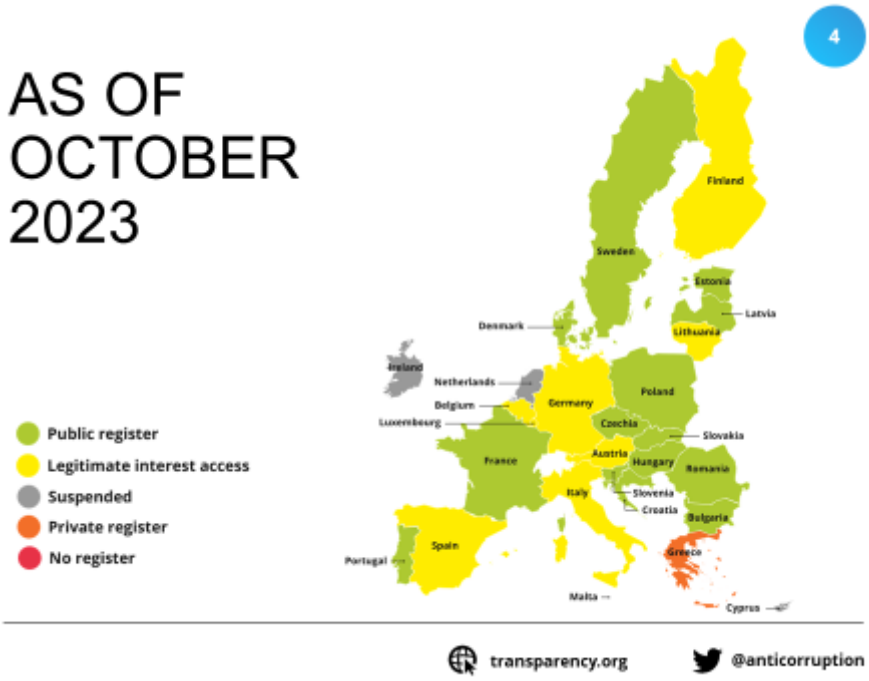
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AS OF OCTOBER 2023
Public register
Legitimate interest access
Suspended
Private register
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Netherlands
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NOTES

Sanctions are an essential tool to safeguard EU values and interests, but how can the EU enforce them and protect its budget in the process? With a particular focus on the EU-Russia sanctions, this workshop looked at the issue from various perspectives, including trade sanctions, criminalising sanctions circumvention, asset freezing and tracing final beneficiaries of EU funds.

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