

# Rödl & Partner

NEWSLETTER SANCTIONS

SUCCESSFUL TOGETHER

Issue:

June

2024

The latest news on EU sanctions against Russia and Belarus

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### Harmonization of criminal law: EU sets a unified standard for sanctions violations



In May, Directive (EU) 2024/1226 (hereinafter referred to as the Directive), which criminalizes sanctions violations, entered into force. By adopting this Directive, EU sets a new standard that defines certain violations of sanctions as criminal offences. Until now, the penalties for breaches of EU sanctions have been significantly different in every Member State, also inconsistent and often not dissuasive enough. As a result, a new Directive was introduced to provide more clarity and uniformity in the EU. Now, it is expected that in the future criminal offences for sanctions violations will be determined by the EU, also that penalties for offences will be tightened. For example, in Germany it is expected that significantly higher penalties will be imposed.

Ensuring the effective application of EU sanctions is the key objective of this Directive. Therefore, Member States must implement effective, proportionate, and dissuasive criminal and non-criminal penalties. These penalties must also address the circumvention of sanctions.

According to the Directive, the following conduct constitutes a criminal offence if it is 1) intentional and 2) in violation of a prohibition, restriction, or obligation that constitutes an EU restrictive measure or is set out in a national provision implementing an EU restrictive measure:

- Making funds or economic resources available directly or indirectly to, or for the benefit of, a sanctioned person
- Failing to freeze funds or economic resources belonging to, or owned, held, or controlled by, a sanctioned person
- Enabling sanctioned individuals to enter or transit through the territory of a Member State
- Entering into or continuing transactions with a third State, bodies of a third State, or entities directly or indirectly owned or controlled by a third State or its bodies, including the awarding or continued execution of public or concession contracts
- Trading, importing, exporting, selling, purchasing, transferring, transiting, or transporting sanctioned goods

- Providing financial services, performing financial activities, or offering other prohibited services
- Circumventing EU restrictive measures
- Breaching or failing to fulfill conditions under authorizations granted by competent authorities

More specific penalties for natural persons are outlined in Article 5 of the Directive. As legal persons are also subject to EU sanctions regulations, they should be held liable for offences related to the violation of these sanctions. The liability of legal persons is described in Article 6, and penalties for legal persons are detailed in Article 7 of the Directive.

Additionally, some important legal concepts described in this Directive include:

- Serious negligence should be interpreted in accordance with national law, taking into account relevant case law from the Court of Justice of the European Union.
- Goods include items such as military technology and equipment, software, and technology listed in the Common Military List of the EU adopted on 20 February 2023, or in Annexes I and IV of Regulation (EU) 2021/821.
- Aggravating circumstances should be understood as facts enabling a national judge or court to impose more severe sentences for the same offence than would normally be imposed without such facts, or as the possibility to treat several criminal offences cumulatively to increase the penalty level.

Member States must implement the necessary laws to comply with this Directive by 20 May 2025.

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## Russia implements a new mechanism to seize U.S. assets for compensation

The Presidential Decree issued by the President of the Russian Federation on 23 May 2024, titled "Special procedure for compensation of damage caused to the Russian Federation and the Central Bank of the Russian Federation in connection with the unfriendly actions of the United States of America," introduces a significant new policy.

By issuing this Decree, the President of Russia authorized the use of US property in Russia to compensate for the seizure of Russian assets. The Decree allows victims to go to court if their property rights were unjustifiably deprived by a decision of the US authorities.

If a Russian court determines that the US authorities lacked sufficient grounds to seize Russian assets, it will request the Russian Foreign Investment Control Commission (hereinafter referred to as the Commission) to provide a list of US property that can be used as compensation for damages. This property may belong to US citizens and residents, as well as legal entities owned by US citizens, regardless of their place of registration. The Decree categorizes all of these as US persons.

Russian courts are empowered to use US property in Russia to compensate for damages resulting from the seizure of Russian assets in the US. The US property that could be used as compensation includes:

- Movable and immovable property
- Property of US companies and citizens in Russia
- Securities or shares owned by US persons
- Other unspecified property rights

The Decree establishes a new mechanism in Russia that allows a Russian court, with the assistance of the Commission, to identify the assets of US persons in Russia and use them for compensation at a proportionate value to the lost Russian assets due to US government or court decisions.

It should be emphasized that the entities entitled to compensation under this Decree are solely the Central Bank of Russia and the Russian Federation itself (i.e., the state).

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## Anticipated arrival in June: The 14<sup>th</sup> EU Sanctions package and the plan to make EU operators responsible for sanctions violations

The EU has already adopted 13 sanctions packages, which have expanded the scope of applicable EU restrictive measures. Consequently, ongoing due diligence is essential for all EU operators to ensure proper sanctions risk management and screening. It's crucial to stay vigilant and prepared, especially considering that the forthcoming EU 14<sup>th</sup> sanctions package is expected to be adopted in June. This new package is anticipated to introduce fresh prohibitions and list new sanctioned individuals.

The proposed restrictive measures by the European Commission are set to encompass a range of areas, including restrictions on energy exports, tackling sanctions circumvention by third countries like Belarus, and addressing Russian liquefied natural gas (LNG) exports, particularly regarding transshipment. Moreover, controls on the export of critical technologies used in Russia's military equipment are on the agenda.

One of the most important parts of the new sanctions package for EU businesses is that the imposition of responsibility on EU operators to be adopted. If their subsidiaries or partners in third countries breach sanctions, then EU operators may face certain negative consequences. However, the full extent of responsibility for sanctions violations will be clear only after the official adoption of the new sanctions package.

Among the other significant sanctions to be adopted are:

- Inclusion of new names on the sanctions list
- Ban on new investments and the provision of goods, technology, and services by EU operators related to LNG projects
- Introduction of a new sectoral ban on shipping related to Russia's military vessels, goods, or technology used in the defense and security sector
- Restrictions on the transport of goods by road, excluding companies in which Russian persons or companies own 25 per cent or more
- Other restrictions on the import and export of goods that could impact the Russian economic industry.

Considering the above, continued vigilance and adherence to due diligence procedures are paramount for all EU operators.

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## Webinar “Sanction issues in due diligence practice”



As the complexities surrounding **sanctions violations** continue to grow, the importance of incorporating thorough due diligence and meticulous contract drafting has never been more critical. Needless to mention that we are committed to providing our clients with the knowledge and tools necessary to stay ahead in this challenging environment. For this reason, [Tobias Kohler](#), the Head of International sanctions practice group, delivered an insightful and engaging presentation during the **webinar** “Sanction issues in due diligence practice”.

The webinar underscored the substantial consequences that can arise from sanctions breaches and emphasized best-practice approaches to mitigate these risks.

Looking forward to meeting you at our upcoming events!



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