November 2024

Strengthening European cooperation to reinforce national efforts on the implementation and enforcement of EU restrictive measures

Non-paper by the Netherlands

Introduction

February 2025 will mark the third year of Russia's war of aggression against Ukraine and the adoption of extensive and unprecedented EU restrictive measures (EU sanctions) in reaction to Russia's aggression. **The effectiveness of EU sanctions are highly dependent on the effective and consistent implementation and enforcement across the Union**. Although Member States are ultimately responsible for implementation and enforcement, the European Commission also has a leading role, specifically in monitoring the correct and uniform implementation of EU sanctions, to provide guidance to economic operators and ensure a level playing field. Since the adoption of extensive EU sanctions against Russia, the Commission has taken up its role within its competences and capacity. After all the work that has been done **the time is right for reflection on strengthening European cooperation on the implementation and enforcement across the Union.**

With EU sanctions likely to remain an integral part of the Union's toolbox, it is now up to the Council, the Member States and the Commission collectively to further step up and structurally strengthen the implementation and enforcement across the Union. Herein, the Commission and Member States have the opportunity to build upon the existing system and strategies relating to the design of legislation, and encouraging and supporting the implementation and enforcement by Member States, national competent authorities and the private sector.[1]

Below, an overview of existing and new ideas – within the competences and mandate of Member States and the Commission – that help to increase the effectiveness of sanctions, whilst also fitting the better regulation agenda.[2] We invite Member States to support these ideas and sponsor this paper.

1) 'implementation by design'

1. The effectiveness of EU sanctions depends to a large extent on whether they can be implemented, complied with and enforced. With the introduction of numerous new types of sanctions and accompanying guidance, the system has become more intricate, including the various reporting obligations. This poses a risk to achieving the intended effects as the complexity poses challenges to implementation and enforcement, while the administrative burden does not always commensurate with the intended benefits. This could undermine the support for and effectiveness of these measures. In order to reduce this risk EU sanctions should be created with a mind-set of **'implementation by design'** and existing legal texts should be further harmonised. Better understandable rules are easier to comply with. This fits within the Commissions Better Regulation agenda to improve EU-lawmaking.
2. The Commission could **define the intended goal, implementation and enforcement expectations** when drafting (the recitals of) new types of sanctions. This can be realised by clearly formulating what the aim is, the intended effect and a description of which steps may be taken by NCA's towards its implementation and enforcement without prejudice to national competences. To this end relevant experts concerning the implementation and enforcement of

[1] https://finance.ec.europa.eu/publications/communication-european-economic-and-financial-system-fostering-openness-strength-and-resilience_en#description.
[2] https://commission.europa.eu/law/law-making-process/planning-and-proposing-law/better-regulation_en

specific intended measures should be consulted. This advice should be taken into account in (the recitals) of new types of sanctions.[3]

3. With regard to the existing EU sanctions framework efforts should be made to **harmonise the wording of all the legal texts** between different sanctions regimes and with other relevant legislation, e.g. in relation to the Union Customs Code. Differences in definitions and unintended slight variations in the formulation of sanctions needlessly complicate implementation by EU economic operators and Member States. To this end an initiative was taken by The Netherlands and supported by many Member States and the institutions, stressing the need for standardised text and proposing a system – including making use of a peer review between involved Member States - which allows 'repairs of a technical nature' after the adoption of the EU legal texts in order to align the definitions and formulations, thus increasing legal certainty and contributing to a level playing field.

2) EU-wide (risk) assessment of sanction circumvention

4. Understanding the EU-wide risks of non-implementation and circumvention of sanctions is paramount in preventing breaches. Therefore, the Commission should set up a pilot to develop **a cross-sectoral risk assessment in order to identify the highest risks of circumvention** based upon cases (incl. introduced by MS and anonymised whistleblower information), information on EU sanctions reporting obligations and financial and trade data. The conclusions of such a risk assessment (and thus having better insights into the *modi operandi* of circumvention) should allow for Members States, their NCAs and EU businesses to better deploy their implementation, compliance and enforcement efforts.
5. Such an assessment would **complement future obligations of the Commission to have better insight in EU-wide risks**. By July 2028 the Commission will be obligated to have conducted an assessment of the risks of non-implementation and evasion of targeted financial sanctions on the basis of the sixth Anti-money Laundering Directive.[4]

3) Centralised hub for information, and actionable feedback

6. Information is key in the implementation and enforcement of sanctions. The Commission has obtained a unique information position thanks to the creation of the Sanctions Information Exchange Repository (SIER), which was one of the key actions in the light of the Commission's agenda on reinforcing open strategic autonomy in the macro-economic and financial fields.[5] Having successfully launched several iterations of SIER, the Commission could improve upon it further by evaluating the current data sharing framework and **expanding on its database function and performing analyses** on the available data. Whereby the future interplay with other data hubs – such as the proposed EU customs data hub[6] – should be considered for a full overview and cross-referencing of financial and trade flows. One of the challenges is to bring the right sorts of data together to get a better insight into circumvention patterns.
7. To facilitate implementation and enforcement, all sanction regimes contain (various) reporting obligations for EU operators to the Members States. Currently this information is held at Member State level and shared with the Commission via SIER. All reporting information is (increasingly) finding its way to SIER. The logical next step would be for the Commission to analyse this information in order to **identify gaps and follow-up actions in reporting**, and to give actionable feedback to (NCA's in) the Member States. For instance, information on frozen assets and self-reporting can be most effectively cross-checked at EU-level to verify whether all frozen assets were properly identified. Member States' NCAs can be given actionable feedback which might result in enforcement actions. This may require changes with regard to the information that is reported to SIER by Member States.
8. Further efforts can be made to enrich the data in SIER in order to get a clear picture of sanctioned persons and entities by adding information on their **ownership & control (O&C) structures and firewalls**. This will allow for the NCA's in Member States to take better decisions when granting licenses and will help to identify any persons, entities and therefore assets that should

[3] An example of an (easy fix) issue to be taken into account to this extend is for the Commission to prevent double listings, and thus different derogation clauses can apply (the same entity in two or more different regimes) to prevent enforcement challenges.
[4] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32024L1640.
[5] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021DC0032&qid=1611728656387.
[6] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32024L1640.

be frozen. Simultaneously, this data could feed into existing working groups to share findings on case-level and thereby strengthening more uniform implementation and a level playing field, as well as prevent *forum shopping*. The recently added module on O&C is a welcome addition to SIER. However, work is needed to improve its function in order to make O&C structures more insightful and to develop a better common understanding.

9. Additionally, it would benefit national enforcement efforts and the deterrent goal of sanctions to establish a **database with relevant sanction-related case law and other enforcement successes** from within the EU included in SIER and/or published online.
10. Aforementioned information should give **feedback** into the design measures (implementation by design), help identify new listings and could be used for the traceability of frozen assets. This information could also be used to review existing measures, for example the effectiveness and proportionality of existing reporting obligations.

4) Supporting sanction enforcement systems of Member States

11. The violation of EU restrictive measures was recently added to the list of **EU Crimes**.[7] In order to reflect this change the thematic facility under the **Internal Security Fund** (2021 – 2027) could be used to **allocate resources to combat the circumvention of restrictive measures** in its upcoming working programmes of 2026 and 2027. As one of its main aims is to support efforts to strengthen Member States' capabilities to combat and prevent (sanctions) related crime. A concrete example would be to support (the setting up of) the cooperation mechanisms within and among Member States, Europol, Eurojust and the European Public Prosecutor's Office as laid down in Directive 2024/1226 on the violation of Union restrictive measures.[8] Additionally, specialised tooling and databases could be purchased and made available for enforcement purposes.
12. In 2022 - 2023 the Commission has requested Member States to fill in several questionnaires in order to create an overview of their enforcement efforts. These questionnaires are used to finetune policy, compare Member States and make recommendations. **Evaluating and comparing enforcement systems** may help Member States improve upon their systems by receiving direct feedback[9].
13. In order to structurally monitor and improve the efforts by Member States the Commission should leverage its information position to develop **methods for effective national enforcement systems** – whilst respecting the national competences – through which Member States can strengthen their enforcement. These methods should allow for **the set-up of a peer-review system among the Member States**.

5) Working toward a minimum standard for sanctions implementation and enforcement in Member States

14. Unlike the centralised decision-making process for EU sanctions and the applicability of the rules, its implementation and enforcement are decentralised and up to the Member States. Although there should be room for divergent approaches based on different administrative systems and perceived national risks, this leads to differences in available enforcement, capacity and resources. These **varied approaches pose risks to the European system** if bad actors have the opportunity to exploit the weakest link. Moreover varied approaches may lead to an unlevel playing field. As a result of the lessons learned of supporting Member States' enforcement systems the Commission could explore **optimal implementation methods and effective enforcement methods**, based on best practices of effective national enforcement systems. These methods should focus on administrative enforcement and synergise with Directive 2024/1226 on the violation of Union restrictive measures
15. With the directive on the violation of Union restrictive measures steps were set to harmonise the enforcement systems and increase cooperation between Member States. However, this directive is limited to criminal law whilst sanctions enforcement also could benefit from administrative enforcement interventions in the Member States, as criminal law is not suitable in all instances.

[7] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32024L1226.
[8] In article 15 and 16 of Directive 2024/1226 - on the definition of criminal offences and penalties for the violation of Union restrictive measures cooperation – cooperation mechanisms were introduced at national and EU level in order to ensure the effective investigation and prosecution of violations of Union restrictive measures.
[9] Lessons can be drawn from other EU policy areas (such as Competition Law) for a relevant system.

In order to create an effective European system, whilst respecting the principle of subsidiarity, a **minimum standard based on best practices is required**[10], for effective implementation and enforcement systems within the Member States. These should include standards regarding cooperation and information sharing systems, administrative enforcement and other possibilities to enhance effectiveness.

6) Better assisting private sector implementation

16. The implementation of EU sanctions relies greatly on the efforts, understanding and compliance by EU businesses. It is up to them to follow the rules and to make sure that funds, technology, services, goods and other prohibited assets don't find their way to sanctioned persons and entities. As a main stakeholder in the implementation of EU sanctions, the Commission could set up **a private sector sounding board group on implementation** consisting of the most important sectors in order to continuously improve upon sanctions policy. The Commission could periodically report on the findings following this sounding board to the Council and/or Member States.
17. Assisting Small and Medium-sized Enterprises (SME) to be compliant with EU sanctions is particularly important as these businesses in many cases have fewer compliance resources while running the risks of involuntarily violating sanctions. Two existing tools could therefore be further developed and maintained by the Commission, (1) a **'due diligence helpdesk'** and (2) an online **'sanction tool'**[11]. These tools were first launched in the context of the Iran sanctions and should be expanded to include all sanctions regimes, making it easier for businesses with fewer resources at their disposal, to adhere to EU sanctions.[12] The helpdesk should provide concrete and tailor-made support to EU SMEs and the Sanctions tool (an easy-to-use interactive questionnaire and/or AI-tool) should make it easy for businesses to understand their risks of non-implementation and evasion of sanctions with fewer resources at their disposal.
18. There are **practical improvements** that are much needed to make it easier for business to adhere to sanctions and to increase effectiveness. Firstly, priority should be given to promptly updating and improving the user-friendliness the consolidated legal text after amendments, the consolidated financial sanctions list and EU sanctions map, as these are the main sources used by EU operators to comply – any delay impedes implementation. Secondly, a list should be created of all (sectoral) sanctions measures in place and the persons, entities and bodies targeted. Thirdly, the data quality should be improved by designing directly implementable formats of lists and availability of the data in all EU languages. Fourthly, in case demanded by the private sector FAQ's should ideally be published at the same time, or soon after, as the legal text as it would promote swift implementation by the private sector. Possibly the aforementioned sounding board group could assist in putting forward preliminary questions that a FAQ should address.

7) Adopt base-line compliance rules for high-risk large businesses to prevent breaches of sanctions

19. Even though all sanctions should be adhered to - not all sanctions breaches are equally impactful in terms of size, nature and effect. For some measures it is more **critical that all efforts are made to prevent breaches**. Therefore, some specific categories of EU private operators – that run the risk of impactful breaches (e.g. certain types of good, services and technology) – should be obliged to adhere to **base-line compliance rules (e.g. risk management and due diligence requirements[13]) and fall under adequate (administrative) supervision in the Member States**.[14] This should be **based on the (EU-wide) risk assessment of sanction circumvention (para. 3)** and factors such as nature and size of the EU private operators.

[10] However it is important to find the synergies and limits of other existing legislation and legislative processes such as the EU AML-Package and the initiated EU Customs Reform.
[11] Other sectors (such as institutions that deal with the transfer of knowledge) might also benefit from these tools.
[12] In October 2020 the Commission launched two online tools, the helpdesk provides concrete and tailor-made support to EU SMEs and the Sanctions tool provides an easy-to-use interactive questionnaire that helps SMEs to understand their risks violating sanctions.
[13] These requirements are by their nature risk based, as you want EU operators to increase their due diligence when the risks runs higher.
[14] Some Member states have (administrative) supervision in place on the prevention of breaches.

20. Traditionally, *how* sanctions are to be complied with by the EU private sector operators (and others) is *not* an integral part of the sanctions regulations, as these mostly contain prohibitions. The Commission has been 'filling in the blanks' by providing guidance to EU operators, thereby creating a framework of 'soft law' on how sanctions *should* be complied with, and what due diligence measures EU operators *should* take. For instance; customer, supply chain and end-user due diligence. Even though the guidance is authoritative and increases overall compliance, it **lacks enforceability**, meaning that authorities can only intervene (ex post) when sanctions are breached.
21. First regulatory steps have been taken in this regard, with the adoption of the anti-money laundering package which also contains compliance rules, inter alia due diligence requirements, on targeted financial sanctions for certain EU operators.[15] Even though this is a positive step, the approach has been limited in scope to 'targeted financial sanctions', which only cover a part of the sanctions in place. In addition, it is unknown whether all the necessary EU operators, who run **high risk violating sanctions**, are in scope as the framework is primarily aimed at countering money laundering and terrorism financing.
22. In the 14th Russia sanctions package, very welcome **due diligence and best efforts obligations** were introduced for certain EU operators. However, these obligations only regulate few EU operators and are aimed at very specific measures within the Russia sanctions. Also, these obligations do not impose any requirements on their enforcement in the member states in contrast to the AML-framework.
23. Given the importance of the (ex-ante) **prevention of impactful sanction breaches**, a separate and horizontal regulatory framework should be created on the prevention of sanctions breaches by **certain EU operators that run the highest risk violating sanctions, including circumvention**. This framework should be in line with the aforementioned AML-package and other existing legislation to prevent unnecessary doubling of obligations for the private sector. The commission should put forward a legislative proposal for a Regulation on a joint legal basis of 114 TFEU and 215 TFEU.

[15] In addition compliance rules were adopted in Regulation (EU) 2024/886 of the European Parliament and of the Council of 13 March 2024 amending Regulations (EU) No 260/2012 and (EU) 2021/1230 and Directives 98/26/EC and (EU) 2015/2366 as regards instant credit transfers in euro.