

# Enforcement, oil, and a looming ninth package: Current developments in EU sanctions law

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As the Russian aggression against Ukraine continues, the EU has consistently expanded its sanctions against Russia. Whereas legal action by the EU has so far been limited to the extension of individual and sector-related sanctions, plans have ripened to increase the effective implementation of these sanctions. The EU Commission has now presented a draft Directive to harmonize the definition of criminal offences and penalties for violations of the restrictive measures within the EU. In addition, the EU member states, together with the other G7 states, have agreed on an oil price cap, which is meant to reduce Russian revenues. Finally, the imposition of further restrictions is currently under discussion. It would be the ninth package of sanctions against Russia since the beginning of the war in early 2022. We have summarized these three crucial developments in EU sanctions law below.

## **Proposal to harmonize rules on the punishment of sanctions violations**

The Commission has proposed a Directive on the definition of criminal offences and penalties for the violation of restrictive measures and published a press release on the details of this proposed legal action. The proposal provides for rules that facilitate the investigation, prosecution, and punishment of violations of restrictive measures equally in all member states, thereby harmonizing criminal offenses at the EU level and closing existing legal gaps.

In principle, member states are required to provide for effective penalties for sanctions violations but are generally free in their choice of means. However, this freedom has led to an inconsistent approach across the EU when it comes to prosecuting and punishing sanctions violations. In order to improve enforcement, the Council has already amended Article 83 (1) of the Treaty on the Functioning of the European Union on 28 November 2022, adding sanctions violations to the list of crimes with a cross-border dimension. Accordingly, the EU legislator now can establish minimum rules concerning the definition of criminal offences and penalties in this regard.

The proposed Directive is based on this legal foundation. It lists several types of sanctions violations, which member states would be required to qualify as criminal offences. This includes, for instance, (attempted) violations of trade restrictions carried out intentionally or with “serious negligence” as well as certain intentional acts of circumvention.

It also extends to inciting or aiding and abetting such violations. Other sanctions violations, however, go unmentioned.

Compared to the current legal situation under German law, the Directive would still mean an extension of criminal offences, since Section 18 of the Foreign Trade and Payments Act (*Außenwirtschaftsgesetz*, **AWG**) currently does not cover acts of negligence but only certain intentional sanctions violations. Negligent breaches are only punishable as administrative offences under Section 19 AWG, whereas other sanctions violations, both intentionally and negligently, constitute administrative offences under Section 82 (9) of the Foreign Trade and Payments Ordinance (*Außenwirtschaftsverordnung*, **AWV**).

The draft Directive further provides for standards for penalties but does not set minimum penalties. It instead defers to the member states, which are to impose “effective, proportionate and dissuasive criminal penalties.” However, the Directive provides for maximum penalty to be imposed on individuals, ranging from at least one to five years, depending on the offence in question. With respect to intentional violations, this would be in line with the penalties provided for under Section 18 AWG. However, with respect to cases of “serious negligence”, the Commission’s proposal would lead to a significant increase in possible penalties.

What is more, legal persons must be held liable for such offences and be subjected to penalties which could take various forms, such as the exclusion from access to public funding or public procurement procedures, the withdrawal of permits or even the closure of establishments. In addition, depending on the criminal offence in question, fines shall be imposed, the maximum limit of which should be not less than 1 or even 5 percent of the total worldwide turnover of the legal person in a business year.

The proposal further includes a list of factors that may be considered as aggravating (such as the commission by a public official when performing his or her duties) or mitigating circumstances. The latter includes the provision of information by the offender to the competent authority. Self-disclosures could therefore potentially reduce the penalties incurred for sanctions violations.

The draft Directive will now be discussed by the European Parliament and the Council under the ordinary legislative procedure. It should be noted that in the case of an adoption at EU-level, the Directive will not immediately apply in the Member States but will have to be transposed into national law. In addition, stricter rules and penalties will not take effect retroactively.

## **Introduction of an oil price cap**

In a further development, EU member states and the other G7 countries have agreed to an oil price cap of USD 60 per barrel, which applies to crude oil as of the 5<sup>th</sup> of December

2022, and to petroleum products starting on the 5<sup>th</sup> of February 2023. While the EU's ban on importing Russian oil by sea remains in force, the price cap allows EU companies to transport Russian oil to third countries, provided the price remains below the cap. It aims to further reduce Russia's revenues while keeping global energy markets stable through continued supplies. The measure has been implemented into EU law on the 3<sup>rd</sup> of December 2022 through amendments of the key legislative act on the sectoral sanctions against Russia, namely Article 3n and Annex XXVIII of Regulation (EU) No. 833/2014 (see [here](#) and [here](#)). In order to prevent any complications from the outset, the Commission has already provided a specific [guidance](#) as well as a shorter [press release](#) on the matter.

## **A planned ninth sanctions package**

A proposal for a [ninth sanctions package](#) against Russia is expected to include restrictions on the drone sector, which can be understood as a response to Russia's drone attacks on Ukrainian energy supplies and civilian infrastructure in recent weeks. Additionally, the ninth sanctions package is to include restrictions on further goods and technologies used for military purposes, as well as measures relating to services, investments, and the Russian media and financial sectors. What is more, it has been reported that the new sanctions will also target the mining sector, prohibiting investments in that area. It is also expected that by way of the ninth sanctions package, the EU sanctions list will be expanded by approximately 180 individuals and entities, including further Russian banks. The latest sanctions package is expected to be adopted at the end of next week.

These developments are a reminder for anyone involved in issues that could potentially raise concerns from an EU sanctions law perspective to tread carefully and increase compliance measures.

We will continue to monitor any developments in EU sanctions law and are at your disposal to assist you with any questions you might have in this respect. Please do not hesitate to contact [Pascal Friton](#), [Roland M. Stein](#), [Florian Wolf](#), [Laura Louca](#) or [Tobias Ackermann](#).