

# Sanctions in the context of Russia's invasion of Ukraine



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*This Policy Note builds on (and provides further insights to) a paper the authors prepared for the European Parliament Committee on Economic and Monetary Affairs as regards economic sanctions the EU is imposing on Russia (and Belarus) following the invasion of Ukraine. It covers the EU framework for adopting and imposing sanctions; briefly highlights the sanctions in place and then focusses on how the sanctions are being implemented. We list possible ways of rendering the sanctions more effective. The underlying paper can be found [here](#). The views expressed are those of the authors and cannot in any way be construed as representing the opinion or position of the European Parliament.*

## 1. Object and scope

This paper addresses the so-called “sanctions”, in legal language terms referred to as “restrictive measures” (sanctions hereafter), restricted to only those which the European Union (EU) is universally imposing on Russia (and Belarus) following the invasion of Ukraine. The paper is organised as follows: Section 2 briefly explains the EU framework for sanctions (notably as regards the governance framework) and details the EU sanctions against Russia (and Belarus) following the invasion of Ukraine. Section 3 discusses implementation and enforcement of such sanctions. Section 4 reflects on how enforcement of sanctions can be reinforced.

## 2. Setting the scene: legal framework and sanctions adopted

One of the instruments the EU is using to exert pressure on Russia to stop its military attack on Ukraine are sanctions that either replicate those imposed by international organisations (such as the [Security Council of the United Nations' sanctions](#)), that are EU-specific, or a combination of both. Sanctions are instruments of foreign policy and based on [article 29](#) of the Treaty of the European Union (TFEU). While they target individuals and firms outside the EU, they are binding on authorities, firms or persons located or doing business in the EU (territorial effect of sanctions). *Per se*, sanctions do not primarily aim to punish, but to deter actions or change behaviours. The EU has been using sanctions in the past, notably to prevent conflicts or to defend human rights and international law, as illustrated for example by the sanctions related to [Iran's nuclear programme](#).

Sanctions differ in design, depth and scope, and include restrictions on admission (travel bans), asset freezes and economic measures such as restrictions on imports and exports.

Decisions on the **adoption, renewal, or lifting of sanctions regimes are taken by the Council**, on the basis of proposals from the [High Representative of the Union for Foreign Affairs and Security Policy \(CFSP\)](#). In this context, the European Commission and the European External Action Service (EEAS) have a particular role to play, as they jointly prepare, on behalf of the High Representative, the proposals for a decision, which are subsequently reviewed in the relevant Council working groups and finally adopted by the Council (Foreign Affairs formation).

The first sanctions on Russia were taken in 2014 after Russia had invaded and subsequently annexed the Crimean Peninsula from Ukraine; they have progressively been amended since Russia invaded other parts of Ukraine, with a first package of CFSP decisions from [23 February](#) (see [here](#) for an overview of sanctions under CFSP and its developments over time and below as regards the sanctions adopted so far). If CFSP sanctions include measures with economic and/or financial implications, those need to be implemented through a Council implementing regulation based on [article 215](#) of the Treaty on the Functioning of the European Union. Based on the CFSP decision, the High Representative and the European Commission (led by [DG FISMA](#)) present a joint proposal for a Council implementing regulation, to be adopted in parallel to produce the desired effect.

Member States are responsible for implementing and enforcing the sanctions (a list of the national competent authorities can be found [here](#)). DG FISMA monitors the implementation and enforcement. The EU sanctions governance framework is centralised as regards the setup of sanctions but rather decentralised as regards implementation and enforcement, which indeed may present a number of difficulties.

The [Europol](#) and the [European Public Prosecutor's Office](#) may also be involved in ensuring enforcement of EU sanctions: upon request of Member States' authorities, Eurojust can coordinate the freezing of assets in cross-border cases. If assets affect the EU's financial interests, the European Public Prosecutor's Office would be

competent to investigate and order the freezing of assets. Both institutions are part of the Commission “Freeze and Seize” Task Force.

### Box 1: Freezing and seizing assets

Freezing and seizing assets are often referred in conjunction – but these are actually two very different concepts.

[Council Regulation \(EU\) No 269/2014](#) defines freezing (of economic resources or funds) as “*preventing the use of economic resources to obtain funds, goods or services in any way, including, but not limited to, by selling, hiring or mortgaging them*” and “*preventing any move, transfer, alteration, use of, access to, or dealing with funds in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination or any other change that would enable the funds to be used, including portfolio management*”. So, freezing prevents that the owners can sell their assets - but the ownership as such remains untouched.

Seizing (or confiscation), on the other hand, imply dispossession: The ownership of the assets is taken away, which is fundamentally different from just freezing assets. Such dispossession may require a court decision on whether a specific crime has been committed, which limits its immediate effectiveness.

The EU has established mechanism to ensure mutual recognition of freezing and confiscation orders (see [here](#) for more details).

The Commission provides specific guidance on sanctions’ implementation, including [questions and answers \(Q&A\)](#) related to asset freezes and confiscation (see [here](#)). The Commission also issued guidance in the past that remains applicable (see [here](#) and [here](#), in particular, as regards the scope of asset freezes).

The EU has **progressively imposed sanctions** since March 2014 in response to the:

- illegal annexation of Crimea in 2014;
- decision to recognise the non-government controlled areas of Donetsk and Luhansk oblasts as independent entities in 2022; and the
- unprovoked and unjustified military aggression against Ukraine in 2022.

Since the outbreak of the Russia-Ukraine war, and up to 9 June, there have been **six sanction packages** adopted by the Council<sup>1</sup>.

<sup>1</sup> See [here](#) for a summary description of the legal acts underpinning the sanctions’ packages (the [5th](#) and the [6th packages](#) are missing). See also these two EPRS documents ([here](#) and [here](#)) with additional background information on sanctions relating to the situation of Ukraine. Further documents can be found [here](#).

**Box 2: Transparency International proposals for sanctions**

In the early days of the Russian invasion, [Transparency International recommended](#) to reinforce the EU's initial sanctions and ensure these are not circumvented. By now, after several rounds of sanctioning, a large part of those recommendations has from our point of view at least been partially addressed; the recommendations were:

- Target the sale of luxury goods and diamonds (**addressed**);
- Seize Russian yachts in EU ports and extend the EU flight ban to Russian jets owned through tax havens (**addressed**);
- Expand the EU Magnitsky Sanctions Regime – designed to allow for the punishment of serious human rights violators outside the EU borders – to include corruption (**not addressed**);
- Make ownership information public and free to track down dirty money (**not addressed**);
- Stop Russian elite from hiding their money in EU real estate (**addressed**, see Box 1);
- Introduce common EU rules on seizing oligarchs' ill-gotten assets (**partially addressed**);
- Freeze wealthy Russians' assets in EU sports clubs, prohibit sponsorship by Russian oligarchs and state-owned companies (**partially addressed**, sanctions cover freezing and seizing of assets of a number of people related to President Putin, but there is no specific mentioning of sports clubs);
- Ban golden passports and regulate the sale of EU residency, rescinding the rights of sanctioned individuals (**addressed**);
- Prohibit the use of the so-called “digital rubble” and other tools designed to circumvent sanctions (**addressed**, Crypto assets are considered securities for the purpose of EU sanctions, see [here](#), [here](#) and [here](#));
- Suspend the membership of the five EU Member States in the Russian-founded International Investment Bank, IIB (**partially addressed** by national decisions; Bulgaria, Czechia, Romania, Slovakia announced to exit IIB, Hungary did not; by mid-May, the IIB's webpage did not yet provide information as to whether formal withdrawal processes have been initiated by any of the countries, and what the timeframe for that process would be);
- Ban EU lobbying by companies and other actors with links to the Russian and Belarusian states (**not addressed**); and
- Ban Russian funding of EU political parties (**partially addressed** through limitations on Russia and Russian financial flows to the EU and by EU suspension of Russia media, see [here](#)).

**3. EU sanctions implementation and enforcement**

The effectiveness of sanctions depends on their **coherent implementation**. Commissioner McGuinness [mission letter](#) mentions “*I want you to ensure that the sanctions imposed by the EU are properly enforced, notably throughout its financial system*”. Enforcement - meaning, being able to effectively carry out orders to apprehend goods and values held by those covered by the sanctions - is also key.

Despite various calls at EU and international level<sup>2</sup> for improving cooperation and ensuring consistent implementation of sanctions, gaps persist that make some question whether the EU regime (and that of other large economies) is actually effective. A [study for the European Parliament](#) mentions the relatively large number of court cases that in the past overturned sanctions against individuals on grounds of insufficient reasoning and

<sup>2</sup> See, for example, the 5 April Ecofin conclusions ([here](#)) or the 24 April G7 statement ([here](#)).

evidence, a shortcoming that has only recently been corrected for (for other references also see [here](#) and [here](#)). The current crisis hence requires to take stock of the enforcement regime of EU sanctions against Russia.<sup>3</sup>

In that context, the **Commission committed to a number of actions regarding the sanctions framework** in a [Communication](#) of January 2021, notably to examine the economic impact of sanctions, conduct a review of practices that circumvent and undermine sanctions, and develop a database (still in 2021!) to ensure effective reporting and exchange of information (the so-called Sanctions Information Exchange Repository).

However, there is only **limited information available on the progress and status quo** of those initiatives. A Commission press release of [26 February](#) provides only some information.

First, the Commission **updated a visual tool called “sanctions map”** (see [here](#), and [here](#) on Ukraine) and provides additional information on each package of measures (see notably [here](#); a full list of sanctions with financial/economic impact can be found [here](#)). The EU-Lex website also provides a list of all acts published in the EU Official Journal as regards support to Ukraine (see [here](#)). The Commission also regularly updates the list of travel bans (available [here](#)). These initiatives contribute to transparency and to facilitate compliance with the sanctions.

Second, the Commission **made available a “sanctions whistleblowing tool”** to facilitate reporting on potential violation of sanctions. In comparison, one may note, however, that the US set direct incentives to report violations of sanctions, having adopted on [16 March](#), a whistle-blower programme (the [Kleptocracy Asset Recovery Rewards Program](#)) offering rewards of up to \$5 million for information leading to seizure, restraint, or forfeiture of assets linked to foreign corruption, specifically targeting corruption involving Russian government officials and oligarchs.

Third, the Commission claims to continuously updating and replying to **questions from market participants** as to the scope and interpretation of sanctions (see [here](#)). Questions are also being collected and filtered by the European Supervisory Authorities. These cover, currently, 5 sections - general questions, individual financial measures, finance and banking, trade and customs and other fields. On banking and finance, the Commission notably replied to questions regarding [crypto assets](#), [trading](#) or [euro-denominated banknotes](#). The Commission also issued guidance on the applicable regulations that remains useful to better understand the scope of sanctions (see [here](#)).

Furthermore, the Commission **issued guidance on export-related sanctions** (see notably [here](#) and [here](#)). Such actions are an important contribution to **increasing transparency, raising awareness and facilitating compliance** with the sanctions, thus contributing to **its effectiveness**.

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<sup>3</sup> For some examples of situations where sanctions had (some) of its intended effects see World Economic Forum “*What do sanctions help achieve? An expert explains*” [here](#).

In addition, through its **Freeze and Seize' Task Force**<sup>4</sup>, the Commission is working alongside the newly established 'Russian Elites, Proxies, and Oligarchs (REPO) Task Force'<sup>5</sup> to ensure international coordination and effectiveness of the sanctions. Nevertheless, there is limited information available on the proceedings and results of this Task Force discussions<sup>6</sup>. A Commission [press release](#) of 8 April reports that the Task Force “*is meeting on a regular basis*” and that, following requests from the Commission, “*more than half of the Member States have reported to the Commission the measures taken to freeze assets. They informed about frozen assets worth €29.5 billion, including assets such as boats, helicopters, real estate and artwork, worth almost €6.7 billion. In addition, about €196 billion of transactions have been blocked*”. An 8 April [statement](#) by the Commission President mentions that “*Member States have already frozen EUR 225 billion of private Russian assets in the EU since the beginning of the war*”. Some media reports, however, put the effectiveness of freeze and seize measures so far into question.

At national level, there are a multitude of entities or bodies responsible for implementation and enforcement of sanctions. Their nature is also different, which reflects the differing scope of sanctions. The [list of competent authorities](#) the Commission made available on 7 April shows that all Member States have more than one authority in charge, sometimes with a central coordinating body but, for most, without (apparently) such a centralised coordinating structure. In the US, the enforcement structure is also complex, with a number of federal agencies, with different mandates, involved (see [here](#) for an overview).

Member States are also competent to set and apply penalties in case sanctions are not complied with or circumvented<sup>7</sup>. There is **limited information available on whether penalties were already imposed**.

#### 4. How to make EU sanctions more effective

Looking at past experiences, a number of authors and institutions are reflecting on ways to further reinforce EU sanctions against Russia. Some of these recommendations are listed below.

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<sup>4</sup> The [Task Force](#) was set up by the Commission to ensure EU-level coordination to implement sanctions against listed Russian and Belarussian oligarchs. It is composed of the Commission, national contact points from each Member State, Eurojust and Europol as well as other EU agencies and bodies as necessary. It will coordinate actions to seize and, when possible, confiscate assets of Russian and Belarussian oligarchs. The Commission provides strategic coordination and Eurojust and Europol ensure operational coordination. The first meeting took place on 11 March and was chaired by Commissioner Reynders. The Task Force is set to meet at least weekly. The US Justice Department announced a task force known as [KleptoCapture](#).

<sup>5</sup> Composed by representatives of the EU and the G7 countries Canada, France, Germany, Italy, Japan, the United Kingdom and the United States, as well as Australia and set up by Ministerial Declaration on [16 March](#). It aims at ensuring the effective implementation of the sanctions, to assist other cooperating nations to locate and freeze assets and to determine the possibility to forfeiture the frozen assets.

<sup>6</sup> Additional information was provided at an hearing in the AFET Committee (video recording available [here](#)). A Commission's official mentioned that the Task Force had met, at the time of the hearing, 5 times and that it had established 3 working groups: freezing – investigations and seizing of frozen property – analysing the possibility and design of a common fund fed with the proceeds of confiscated assets. Such fund might [contribute](#) to reconstruction costs in Ukraine. He further explained that the Commission is working to ensure proper coordination on implementing the sanctions, including with the private sector (the so called “enablers” - banks, lawyers and notaries).

<sup>7</sup> [Council Regulation 833/2014](#) (which is being amended as part of the sanctions' packages to cater for the current situation in Ukraine) establishes a basis for sharing information between EU Member States and for Member States to introduce rules on penalties for infringing the bans and restrictions.

A [CEPS paper](#) dated March 2022 (and covering EU sanctions up to the 4th package) suggests (a) excluding more banks from the SWIFT system (some more banks were added on the EU 5th package of sanctions; see above); (b) adding more Russian-held banks to the list of sanctioned entities (though the authors recognise the limited impact that may still have; further banks were covered by the EU 5th sanctions' package); (c) coordinate internationally to exert pressure on China to limit Russia's ability to use its international currency reserves; (d) cooperate with international partners (notably the UK) to ensure effective detection of Russian-related wealth and freeze and seize of such wealth; (e) imposing further sanctions on energy sources.

A paper dated [9 March](#) by the [Atlantic Council](#) looks at options (at the time) available from the US side. The authors recommend further extending the scope of sanctions (companies, persons not yet sanctioned), further restrictions on foreign investment in Russia, further limitations to stock market trading and closing loopholes on sanctions already enacted.

The World Economic Forum recently published an [interview](#) with Jonathan Hackenbroich, a Policy Fellow at the European Council on Foreign Relations. He noted that the EU is lacking a public-private industrial forum to discuss with companies the possible impacts of sanctions as a way to better target them whilst keeping the impacts on EU economy to the minimum.

Law outlets are also covering how clients' should best prepare for the sanctions, with particularly vehement reports against violating sanctions being found on the US side (see [here](#), [here](#) and [here](#), as examples).

Following a first paper published on [19 April](#) proposing an action plan to strengthen sanctions against Russia, the **International Working Group on Russian Sanctions**<sup>8</sup> published on [9 May](#) a second paper outlining a "energy sanctions roadmap", which presents several proposals "*for immediate European action to reduce Russia's oil and gas revenues rapidly, combined with longer term actions to eliminate Russian oil and gas sales to Europe and the Russian threat to European energy security*" (proactive strategy). The paper also offers "*mitigation strategies to counter potential weaponization of energy resources and to anticipate retaliatory actions in the gas sector*" (mitigating strategy). Further details can be found [here](#).

Adequate **coordination** at all relevant levels seem to be one of the most important avenues going forward. In fact, most countries are currently imposing sanctions on Russia. Ensuring a consistent scope of such sanctions, that these are applied across the borders and not circumvented, requires strong and effective coordination.

On the other hand, the effectiveness of sanctions also rests on its implementation. Some of the information available - anecdotal evidence - points to (legal and of different nature) difficulties in identifying, freezing and seizing assets belonging to sanctioned individuals. Investigative journalists, notably those linked to the [International Consortium of Investigative Journalists](#) working on the [Pandora Papers Russia](#), are playing a relevant role in bringing information to the fore.

A third element may also be relevant. There has been some criticism as regards the limitations of effectively seizing assets. Effective seizing requires a decision linking the assets or the perpetrator to a specific criminal violation. This has been highlighted in a recent hearing in the AFET Committee (video recording [here](#)) with some solutions being put forward. The Commission [proposed](#) an [amendment](#) to the [Eurojust Regulation](#) to reinforce its mandate by giving the Agency the legal power to collect, preserve and share evidence on war crimes (the legislative procedure can be followed [here](#)). In the same vein, on 13 April, the Council adopted a decision

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<sup>8</sup> The Working Group is composed of international experts and aim at providing "expertise and experience to governments and companies around the world by assisting with the formulation of sanctions proposals that will increase the cost to Russia of invading Ukraine, and support democratic Ukraine in the defense of its territorial integrity and national sovereignty". See a list of Members of the group in the end of the [paper](#).

amending the mandate of the EU Advisory Mission for Civilian Security Sector Reform in Ukraine (EUAM Ukraine), allowing it to provide support to Ukrainian authorities to facilitate the investigation and prosecution of international crimes committed in the context of Russia's invasion of Ukraine. On [25 May](#), the Commission put forward legislative proposals on asset recovery and confiscation, adding evasion or violation of sanctions to the areas of crime laid down in Article 83(1) TFEU. The provision allows the Council (with consent of the European Parliament) to adopt a decision, by unanimity, identifying areas of particularly serious crime with a cross-border dimension (resulting from the nature or impact of such offences or from a special need to combat them on a common basis).

Other deterrents to effectiveness of the EU sanctions are reported, notably, the requirement for an unanimous adoption by Council (which is reportedly delaying the adoption of an effective ban on Russian gas). The requirement is linked to the EU governance structure and to what EU Member States still see as their "national" concern.

In any case, the concept of *effectiveness* is somehow blurred in this discussion: the economic impacts of sanctions against Russia are already notable (as are the impacts the invasion of Ukraine has had). One can, therefore say that the sanctions are having (an economic) impact (see, in this respect, this specific [analysis](#)). Whether the sanctions will effectively change President Putin behaviour and determination is something different and yet to be fully assessed. ■

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