

Guidance on compliance with financial sanctions

Last updated: July 2021

Contents

I. Introduction	3
II. Responsibilities	4
III. Individual measures – an overview	4
A. Restrictions on dispositions and prohibitions on making funds and economic resources available to sanctioned persons or entities	4
B. Restrictions on payment transactions	5
C. Prohibitions and authorisation requirements applying to the provision of financing and financial assistance.	6
D. Reporting requirements	6
IV. Information on sanctions regimes	7
V. “Best practices” for compliance with financial sanctions	9
A. Business organisation, internal control system (ICS) and internal audit function.	9
1 Responsibilities	9
2 Work instructions and controls of business operations	9
3 Compliance function and reporting system	10
4 Reviews by the internal audit function	10
5 Documentation	10
B. IT systems and outsourcing	10
1 IT systems	10
2 Outsourcing	11
C. Compliance with prohibitions on making funds and economic resources available, restrictions on dispositions, financing bans and authorisation obligations	11
1 New client relationships (new client on-boarding)	11
2 Client base.	12
3 Payment transactions.	12
4 Trade and project financing	12
5 Securities transactions	13

I. Introduction

Restrictions on the movement of capital and payments exist, inter alia, in connection with (financial) sanctions (including the sanctions regimes for the prevention of terrorist financing and the financing of the proliferation of weapons of mass destruction).

The sanctions applicable in Germany are based on decisions of:

- the United Nations (UN) Security Council;
- the Council of the European Union (EU);
- domestic authorities (individual intervention of the Federal Ministry for Economic Affairs and Energy on the basis of Section 6(1) in conjunction with Section 4(1) and (2) of the Foreign Trade and Payments Act (Außenwirtschaftsgesetz – AWG).

While decisions of the UN Security Council need to be transposed into national or European law, regulations of the Council of the European Union in the domain of foreign trade legislation (some enacted to transpose UN Security Council resolutions) are directly applicable.

The scope of application of the EU sanctions regulations and thus the group of parties bound by these regulations are governed by identical provisions in the

respective regulations for all EU sanctions regimes.¹ National restrictions on dispositions and prohibitions on making funds and economic resources available pursuant to sections 4 and 6 of the Foreign Trade and Payments Act apply within the scope of the Foreign Trade and Payments Act.

Under Sections 18 and 19 of the Foreign Trade and Payments Act and Section 82 of the Foreign Trade and Payments Regulation (Außenwirtschaftsverordnung – AWW), infringements of financial sanctions may be punished as an administrative offence or in certain cases as a criminal offence. Under civil law, transactions that contravene prohibitions enshrined in financial sanctions legislation may also be rendered void pursuant to Section 134 of the German Civil Code (Bürgerliches Gesetzbuch – BGB).

This information sheet is intended to provide individuals and enterprises in the financial sector with guidance on how to achieve compliance with the provisions of the financial sanctions applicable in Germany and what measures financial sector parties² with obligations in this regard are expected to take in order to successfully guard against infringement of financial sanctions.

¹ See, for example, Article 19 of Council Regulation (EU) 2020/1998 (sanctions regime against human rights violations): “This Regulation shall apply: (a) within the territory of the Union, including its airspace; (b) on board any aircraft or vessel under the jurisdiction of a Member State; (c) to any natural person inside or outside the territory of the Union who is a national of a Member State; (d) to any legal person, entity or body, inside or outside the territory of the Union, which is incorporated or constituted under the law of a Member State; (e) to any legal person, entity or body in respect of any business done in whole or in part within the Union.”

² On the group of parties bound by these obligations, see footnote 1.

II. Responsibilities

Under the Foreign Trade and Payments Act and the applicable EU Council Regulations, the Deutsche Bundesbank is responsible for the implementation of EU sanctions in Germany insofar as these relate to “funds” within the meaning of sanctions legislation (“financial sanctions”). The term “funds” is interpreted broadly for the purposes of sanctions legislation. It refers not only to cash and book money but encompasses “financial assets and benefits of every kind” in a general sense, including, for example, cheques, claims on money, drafts, publicly and privately-traded securities and debt instruments, including stocks and shares, warrants, debentures, derivatives contracts, interest, dividends etc.³

Operational activities related to the implementation of sanction measures are carried out by the

Bundesbank’s Service Centre for Financial Sanctions (SZ FiSankt) in Munich. In addition, the Bundesbank’s Service Centres for External Sector Audits and Reporting Queries (SZ AW) monitor compliance with financial sanctions in the financial industry by conducting on-site examinations. Section 23(2) of the Foreign Trade and Payments Act provides the legal basis for such examinations. In accordance with Section 23(1) of the Foreign Trade and Payments Act, information and the submission of documents may also be requested for this purpose.

Responsibility for sanctions regarding goods, economic resources, technical assistance, brokering services, services and investments lies with the Federal Office for Economic Affairs and Export Control (BAFA) in Eschborn.

III. Individual measures – an overview

A. Restrictions on dispositions and prohibitions on making funds and economic resources available to sanctioned persons or entities

Measures targeted at specific (natural and legal) persons and entities listed in the annexes to the various EU sanctions regulations which restrict dispositions and prohibit the making available of funds and eco-

nomical resources to such persons or entities are amongst the most important and severe measures in the area of financial sanctions.

³ The relevant regulations contain a definition of the term. See, for example, Article 1(l) of Council Regulation (EU) No 267/2012 (Iran sanctions regime) and Article 1(1) of Council Regulation (EC) No 881/2002 (ISIL/Al-Qaida sanctions regime).

The “freezing of funds” (which is how a comprehensive restriction on dispositions is typically referred to) is defined in the financial sanctions regulations⁴ as:

“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 other change that would enable the funds to be used, including portfolio management.”

Institutions whose clients and/or counterparties include sanctioned persons or entities are therefore required to ensure that any funds belonging to those clients/counterparties are not withdrawn (or are only withdrawn with official authorisation).

Important: Restrictions on dispositions enacted by financial sanctions legislation relate not only to funds under the **ownership** of a particular person or entity but also to any funds **controlled** by them.

Prohibitions on making funds and economic resources available imposed by financial sanctions legislation are intended to prevent funds directly or indirectly benefiting sanctioned persons or entities.

While restrictions on dispositions of funds are primarily applicable to intended disposals of funds of sanctioned clients/counterparties, prohibitions on making

funds and economic resources available must be observed generally (i.e. fundamentally across all types of business, including payment transactions).

To ensure compliance with applicable restrictions on dispositions and prohibitions on making funds and economic resources available under financial sanctions legislation, it is important for enterprises in the financial sector to:

- find out about existing financial sanction measures and
- make arrangements for the event that these measures become relevant to their own operations.

Section V of this document provides more detailed information on some of these arrangements.

The “EU Best Practices for the effective implementation of restrictive measures” produced by the Working Party of Foreign Relations Counsellors (RELEX) contains further assistance on how to determine whether funds are controlled by a sanctioned person or entity, where an indirect provision of funds to a sanctioned person or entity can be assumed, and on further questions concerning the implementation of restrictions on dispositions and prohibitions on making funds and economic resources available (see also the links provided in Section IV).

B. Restrictions on payment transactions

In some cases, not only restrictions on dispositions and prohibitions on making funds and economic resources available are imposed in respect of certain persons or entities, but also general restrictions are

placed on payment transactions involving certain countries (prohibitions, authorisation and/or notification requirements).

⁴ See for example Article 1 letter k) of Council Regulation (EU) No 267/2012, and Article 2(11) of Council Regulation (EU) No 2017/1509 (North Korea sanctions regime).

Payment service providers are required to detect relevant payments in the mass of transactions that they are processing and ensure that a payment transaction is only executed if the requisite procedural steps have been observed.

At present, the EU's financial sanctions regime in respect of North Korea is the only set of restrictive measures that provides for general restrictions on payment transactions (see Chapter IV of Council Regulation (EU) 2017/1509).⁵

C. Prohibitions and authorisation requirements applying to the provision of financing and financial assistance

Some financial sanctions regimes include restrictions (prohibitions or authorisation requirements) on the granting of financing and financial assistance (loans, guarantees, documentary credits, sureties, etc.) in connection with the trading of certain goods or services. These restrictions are often linked to the intended place of use of goods or the place of service rather than the particular countries where contracting parties in a trade transaction are domiciled. This means that such measures may come into play even where

neither of the contracting parties is domiciled in a sanctioned country.

Persons and enterprises providing trade financing must be aware of the background of any financing activities executed by them so as to spot and comply with any relevant prohibitions or authorisation requirements. To do so, all available sources of knowledge can be used. EU financial sanctions do not establish a general requirement to investigate, however.

D. Reporting requirements

The effective use of financial sanctions by the EU and the efficient implementation of the measures by the competent authorities can only be ensured when sufficient information is available on the impact and outcomes of the measures adopted. For that reason, financial sanctions regulations stipulate extensive duties to cooperate and provide information. These

require all persons and organisations subject to Union law to supply any information that facilitates the application of the financial sanctions regulations – such as information on frozen accounts and amounts – without delay to the competent authorities of the Member States (in Germany: the Bundesbank) and to cooperate with these authorities in reviewing the

⁵ Irrespective of this, there are specific restrictions in place with respect to so called “high-risk jurisdictions subject to a call for action” designated by the Financial Action Task Force (FATF). These high-risk jurisdictions exhibit considerable deficiencies in combating and preventing money laundering, terrorist financing and proliferation financing. Currently, Iran and North Korea are classified as high-risk jurisdictions. In view of the current call by the FATF to adopt effective countermeasures within the meaning of Recommendation 19 against Iran and North Korea, general administrative acts issued by BaFin have mandated a reporting requirement for business relationships and transactions involving Iran or North Korea.

information.⁶ The following email address of the Bundesbank's Financial Sanctions Service Centre (SZ FiSankt) can be used for notifications of this kind:

sz.finanzsanktionen@bundesbank.de

SZ FiSankt actively requests information on frozen accounts and amounts in Germany by means of email circulars sent to all credit institutions domiciled in Germany when financial sanctions are imposed on new addressees or if names (including aliases) or other identifiers of persons or entities to which sanctions already apply change. Credit institutions are then requested to report any frozen funds held with them to SZ FiSankt within one week. Credit institutions holding no frozen funds are asked to submit a nil report.

Institutions domiciled in Germany are expected to respond promptly and accurately to queries from SZ FiSankt (as a rule, they are given a period of one week to do so).

In the interests of safeguarding confidentiality, the respective sanctions regulations stipulate that information gathered in this way may only be used for the purpose of effective application of the financial sanctions measures concerned.

As part of their on-site examinations on the basis of Section 23(2) of the Foreign Trade and Payments Act, the Bundesbank's Service Centres for External Sector Audits and Reporting Queries may check that institutions have the relevant processes in place and that these function reliably.

IV. Information on sanctions regimes

More detailed information on specific sanctions regimes and the EU regulations as well as on (temporary) individual interventions of the Federal Ministry for Economic Affairs and Energy can be found (in German) on the Bundesbank's website at

<https://www.bundesbank.de/de/service/finanzsanktionen>

The Bundesbank's Service Centre for Financial Sanctions can be contacted by calling +49 (0)89 2889 3800 (hotline).

In the EU, UN sanctions are transposed by means of EU regulations which are directly applicable in every Member State. Within the framework of its common foreign and security policy, the EU also adopts restrictive measures of its own on the basis of Articles 28 and 29 of the Treaty on European Union and also implements these via EU regulations on the basis of Article 215 of the Treaty on the Functioning of the European Union.

Consolidated versions of the EU financial sanctions regulations can be found online – as an (unofficial)

⁶ See, for example, Article 40(1) of Council Regulation (EU) No 267/2012 (Iran sanctions regime) and Article 5(1) of Council Regulation (EC) No 881/2002 (ISIL/Al-Qaida sanctions regime). Pursuant to Article 23(1) letter e) of Council Regulation (EU) 2017/1509, there is also an obligation to notify the Financial Intelligence Unit (FIU). This is without prejudice to other reporting obligations pursuant to Section 43 of the Money Laundering Act (Geldwäschegesetz – GWG).

aid – on the website of the Publications Office of the European Union:

<https://eur-lex.europa.eu>

These consolidated versions can also regularly be accessed by visiting the EU's "Sanctions Map" which provides a quick and comprehensive overview of sanctions measures applying to particular countries or groupings.

<https://sanctionsmap.eu/>

It also contains information on the persons and entities listed under a specific sanctions regime. A consolidated list of persons and entities subject to EU sanctions is also available for download at

https://eeas.europa.eu/topics/common-foreign-security-policy-cfsp/8442/consolidated-list-of-sanctions_en

A search function allowing users to check whether particular persons are subject to EU sanctions is available at the following website, which is based on the consolidated EU sanctions list:

[Justizportal des Bundes und der Länder: Finanz-Sanktionsliste](#)

In exceptional cases, in particular in the interests of a timely implementation of UN sanctions, national restrictions on dispositions and prohibitions on making funds and economic resources available can also be enacted in Germany in the form of individual interventions on the basis of Sections 4 and 6 of the Foreign Trade and Payments Act. These are published in the official section of the Federal Gazette at

<https://www.bundesanzeiger.de>

The "EU Best Practices for the effective implementation of restrictive measures" produced by the Working Party of Foreign Relations Counsellors (RELEX) are available at

<https://www.consilium.europa.eu/en/policies/sanctions/>

They can also be accessed by clicking on the "Guidelines" icon next to the individual sanctions regimes on the Sanctions Map (see above).

V. “Best practices” for compliance with financial sanctions

To ensure compliance with financial sanctions, institutions need to implement appropriate controls and processes. The best practices for the financial sector laid out in these guidance notes are based on the recommendations formulated by the RELEX working party and the Financial Action Task Force (FATF)⁷ and tie in with benchmarks that can be derived from other sets of provisions. These include, in particular, the Banking Act (Kreditwesengesetz – KWG), the Minimum Requirements for Risk Management (MaRisk) and the Act on the Supervision of Insurance Undertakings (Versicherungsaufsichtsgesetz – VAG)

The “best practices” are designed to guide institutions/enterprises in implementing controls and processes to ensure compliance with financial sanctions.

Such controls and processes should be oriented towards the risk content of transactions and business relationships from a sanctions legislation perspective.

These best practices have no legal character.

However, a fine or prosecution (Section 18 et seq. of the Foreign Trade and Payments Act) may result if a breach of a financial sanctions regime is revealed which can be traced back to inadequate controls or processes and the competent authorities or courts consider that there was a failure to apply the requisite due diligence. This is particularly true if the Bundesbank has already made the institution concerned aware of the inadequate controls or processes that led to the breach (for example, in the context of an external sector audit).

A. Business organisation, internal control system (ICS) and internal audit function

1 Responsibilities

In order to effectively comply with financial sanctions, it is crucial that processes and the associated tasks, competencies, controls, responsibilities, escalation tiers for suspicious case processing as well as communication channels are clearly defined and coordinated.

2 Work instructions and controls of business operations

The management board of the institution/enterprise is required to ensure that business activities are conducted on the basis of organisational guidelines. To ensure compliance with financial sanctions, it is necessary to have in place handbooks, written work

⁷ Germany is a founding member of the Financial Action Task Force (FATF), set up in 1989. The FATF is the most important international standard-setter for combating and preventing money laundering, terrorist financing and the financing of the proliferation of weapons of mass destruction. The FATF has published two recommendations concerning compliance with financial sanctions, namely Recommendation 6 on targeted financial sanctions related to terrorism and terrorist financing, and Recommendation 7 on targeted financial sanctions related to proliferation financing.

instructions or workflow descriptions for the compliance function and, where applicable, decentrally for individual business areas such as payment transactions, client on-boarding, and documentary business. The appropriate level of detail of the organisational guidelines depends on the nature, scope, complexity and risk content of the business activities.

The written work instructions must be communicated to the staff members concerned in a suitable manner. It must be ensured that employees have access to the latest version of these documents. Employees should receive regular training.

The handbooks and work instructions are to be swiftly amended in the event of changes to the activities and processes.

It must be ensured within each business area of an institution/enterprise that the requirements contained in the handbooks and work instructions for compliance with financial sanctions are met. Appropriate business operation controls must be put in place for this purpose and ensured on an organisational basis.

3 Compliance function and reporting system

It is the duty of the compliance function to seek to ensure the implementation of effective procedures guaranteeing adherence to financial sanctions and of corresponding controls, as well as to monitor these controls. The compliance function should support

and advise the management board, particularly with regard to the implementation of the underlying legal regulations. Compliance officers should report regularly to the management board on the matter of compliance with financial sanctions. Essential information concerning financial sanctions must be forwarded to the management board without delay.

4 Reviews by the internal audit function

The enterprise's activities and processes to ensure compliance with financial sanctions, including those outsourced, are to be audited at appropriate intervals, as a general rule within three years. An annual audit shall be conducted where particular risks exist. The three-year audit cycle may be waived in the case of activities and processes which are immaterial in terms of risk. The risk classification of activities and processes must be reviewed regularly and documented accordingly.

5 Documentation

All controls and processes relating to financial sanctions are to be documented. The control and monitoring documents prepared, including those on processing suspicious cases (and the decision criteria applied in that regard), must be systematically written in a manner that is comprehensible to expert third parties, and stored in accordance with the relevant applicable legal provisions (e.g. Section 147 of the Fiscal Code (Abgabenordnung), Section 257 of the Commercial Code (Handelsgesetzbuch)). It must be ensured that the documentation is up to date and complete.

B. IT systems and outsourcing

1 IT systems

Institutions/enterprises are expected to employ IT-based screening systems or other procedures geared towards operational requirements, business activities and risk level in order to allow immediate blocking or

freezing of accounts, securities accounts and assets in the event of new listings and to ensure compliance with any existing restrictions on dispositions and prohibitions on making funds and economic resources available, including in payment transactions.

Before first use and following any material changes, the IT systems must be tested and approved by both the responsible organisational unit and IT staff. In addition, IT systems and methodology must be validated on a regular basis to ensure they are fit for purpose and function properly.

2 Outsourcing

Responsibility for outsourced activities and processes that serve the purpose of compliance with financial sanctions remains with the outsourcing institution/

enterprise. The outsourced activities and processes must be properly monitored and documented. This also includes regularly evaluating the external service provider's performance on the basis of defined criteria.

In the case of material outsourcing, the institution/enterprise must have safeguards in place for the event of an intended or expected termination of the outsourcing arrangement such that the continuity and quality of the outsourced activities and processes are also ensured after the termination of this arrangement.

C. Compliance with prohibitions on making funds and economic resources available, restrictions on dispositions, financing bans and authorisation obligations

The institution/enterprise must implement appropriate techniques, procedures and methods in all business areas and processes affected by financial sanctions in order to be able to effectively implement restrictions on dispositions and prohibitions on making funds and economic resources available to sanctioned natural or legal persons as well as financing bans and restrictions relating to goods and business activities⁸ rather than persons. Furthermore, appropriate processes must be set up in order to comply with reporting requirements to the Bundesbank's Financial Sanctions Service Centre (SZ FiSankt) and, if necessary, to be able to obtain authorisations from SZ FiSankt.

The sanctions lists and data sources used in each case must be kept up to date.

Specific points:

1 New client relationships (new client on-boarding)

As part of the **on-boarding** of **new** clients/counterparties, apart from legally standardised exceptions, their identity must be examined by reference to official ID documents. After this, a screening to identify possible sanctions must be performed (at the latest prior to granting access rights or otherwise permitting

⁸ The terms "financing or financial assistance" were introduced and defined in European legislation in Council Regulation (EU) 2021/48 of 22 January 2021 amending Regulation (EC) No 147/2003 concerning restrictive measures in respect of Somalia. The expression is used to mean any "action whereby the person, entity or body concerned, conditionally or unconditionally, disburses or commits to disburse its own funds or economic resources, including but not limited to grants, loans, guarantees, suretyships, bonds, letters of credit, supplier credits, buyer credits, import or export advances and all types of insurance and reinsurance, including export credit insurance. Payment as well as terms and conditions of payment of the agreed price for a good or a service, made in line with normal business practice, do not constitute financing or financial assistance".

the disposition of funds⁹). The names and data of the clients/counterparties must be recorded correctly and the screening documented in an appropriate manner. If, during the drawing up of the contract or at any time afterwards, one or several other persons act on behalf of the contracting party as an authorised representative or proxy who could have access to funds managed within the framework of the client relationship, those persons must also undergo the appropriate identification procedures and be subjected to sanction screening. The same applies to beneficial owners as ascertained by the institution/enterprise.

2 Client base

Following the entry into force of a legal act containing new sanction measures against particular natural or legal persons and groupings, the client base must be checked against it for any matches so that the accounts/securities/assets of sanctioned natural persons, legal persons or groupings can be blocked without delay. For this to happen, the entire client base and the persons and entities authorised or entitled to act on their behalf in business relationships must be screened using up-to-date data sources. If the Bundesbank has sent a circular concerning the new legal act and included a request for information, the outcome of the screening must be communicated to the Bundesbank (see Section III. D).

3 Payment transactions

When dealing with cross-border payment transactions, the following fields, at a minimum, need to be checked against the respective current sanctions list: payee (beneficiary), payee's payment service provider, payer (originator), payer's payment service provider (originator) and reference (e.g. by means of a keyword search). This does not apply if a check is already implemented as part of a regular screening of the client base (cf. item 2 above).

For the time being, in the case of electronic domestic German payment transactions, the institution of the payer and any intermediary institutions involved need not check whether the payee is subject to foreign trade law restrictions. The general obligations to prevent money laundering and terrorist financing (e.g. Section 25h(2) of the German Banking Act (Kreditwesengesetz)) remain unaffected.

Aside from this, in the case of payment form transactions, the identity of the originator must be verified and the originator, recipient and recipient institution must undergo sanction screening.

4 Trade and project financing

Trade financing refers to the lending and guarantee business as well as payment instruments and financial services serving to fund or hedge trade in goods or services. Project finance relates to special forms of financing for investment projects which are clearly defined and generally large in scale. An example of this is infrastructure financing.

Where trade and project financing are concerned, all parties discernibly involved in the respective transaction (which, besides the contracting parties, may include other persons/entities/infrastructures such as hauliers, ships, manufacturers, involved banks, investors etc.) must be checked against up-to-date sanctions lists, provided the natural or legal persons concerned are not already included in the customer master data and are, as such, already covered by ad hoc or regular client base screening. This is to make sure that providing the financing will not entail negligent infringement of any existing restrictions on dispositions or prohibitions on making funds and economic resources available.

In addition to restrictions on dispositions or prohibitions on making funds and economic resources available

⁹ Meaning "funds" as defined for the purposes of financial sanctions legislation (see footnote 1).

that are tied to the identity of the parties involved, some EU financial sanctions regulations also contain prohibitions and/or authorisation requirements applying to the granting of financing and financial assistance that relate to the good or service¹⁰ to be traded or to the type of project.¹¹ For transactions where sanction risks of this kind can be discerned, appropriate procedures and processes must therefore be defined to ensure compliance with relevant prohibitions on financing or authorisation requirements. This applies particularly to trade transactions having a recognisable link to sanctioned countries or regions or to dual-use or military goods. When assessing whether the planned provision of financing or financial assistance for a trading transaction could be affected by sanctions, reference can be made to documents issued by the customs authorities or the Federal Office of Economic Affairs and Export Control, if available. If the transaction is relevant from a sanctions perspective (provided the transaction is not unconditionally prohibited), an application for authorisation of provision of financing or financial assistance can be

submitted to the Bundesbank's Service Centre for Financial Sanctions.

5 Securities transactions

In the case of securities transactions, compliance must be ensured with any restrictions on dispositions and prohibitions on making funds and economic resources available as well as any specific restrictions. This means, for example, that securities and bonds of sanctioned enterprises may not be purchased if the paid purchase price (indirectly) benefits the issuer.

Securities accounts belonging to sanctioned clients/counterparties must be blocked (frozen) so as to reliably preclude any potential dispositions of securities held in the securities account.

In the case of incoming payments from securities (repayment on maturity, interest, dividends, etc.), special provisions generally take effect, allowing the corresponding funds to be credited to the frozen account of the respective client/counterparty.

¹⁰ Example: contracts relating to the sale or supply of goods and technologies listed in the EU Common List of Military Equipment to Venezuela (see Article 2(1) letter b) of Council Regulation (EU) 2017/2063).

¹¹ Example: construction of a power station in Syria (see Article 12(1) letter b) of Council Regulation (EU) 36/2012).

Deutsche Bundesbank
Wilhelm-Epstein-Straße 14
60431 Frankfurt am Main

Postfach 10 06 02
60006 Frankfurt am Main

Telefon 069 9566-0
Telefax 069 5601071
Internet <http://www.bundesbank.de>