

The following information has been provided to answer questions regarding financial sanctions that have frequently been put to the Deutsche Bundesbank over recent days. Please note that this is general information – it is not exhaustive and does not substitute any authorisations from the Bundesbank that may be required in individual cases.

Due to the unprecedented nature of the sanctions imposed on Russia, many questions have been raised regarding their practical implementation. We are currently working to clarify these issues with the competent units of the Federal Government and the European Union as quickly as possible. These issues must be clarified so that the sanctions can be applied uniformly throughout the EU. Please understand that it might therefore take some time to respond to enquiries.

1. What are financial sanctions?

Financial sanctions are restrictions to capital flows and payment transactions.

The most important and severe forms of financial sanction include prohibitions on dispositions (also known as “freezing of funds”) and prohibitions on making funds and economic resources available, which can be imposed on specific persons, enterprises or bodies. The names of the persons, enterprises or bodies affected by the sanctions are added to special annexes to the relevant EU sanctions regulations for this purpose.

Furthermore, 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.

The restrictive measures enacted by way of EU regulations apply directly in every Member State and therefore do not need to be transposed into national law.

Institutions whose clients and/or counterparties include sanctioned persons, enterprises or bodies are required to ensure that any frozen funds are not withdrawn (or are not withdrawn without special authorisation under sanctions law).

In order to facilitate compliance with freezes of funds applicable under financial sanctions law, it is important for banks to obtain information on existing financial sanctions and make arrangements for the event that these measures become relevant to their own operations. Hence, institutions are expected to employ IT-based screening systems or other procedures geared towards operational requirements, business activities and the risk situation in order to allow accounts, securities accounts and assets to be blocked without undue delay in the event of new listings.

In accordance with the Foreign Trade and Payments Act (*Außenwirtschaftsgesetz – AWG*) and the Foreign Trade and Payments Regulation (*Außenwirtschaftsverordnung –*

AWV), infringements of legal acts imposing financial sanctions may be punished as an administrative offence or, in certain cases, also as a criminal offence.

2. What are “funds” within the context of financial sanctions?

Under financial sanctions law, “funds” is a broad term and comprises more than just cash and book money. It encompasses “financial assets and benefits of every kind”.

Article 1 point (g) of Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine defines this term as follows:

“funds” means financial assets and benefits of every kind, including, but not limited to:

- (i) cash, cheques, claims on money, drafts, money orders and other payment instruments;
- (ii) deposits with financial institutions or other entities, balances on accounts, debts and debt obligations;
- (iii) publicly- and privately-traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivatives contracts;
- (iv) interest, dividends or other income on or value accruing from or generated by assets;
- (v) credit, right of set-off, guarantees, performance bonds or other financial commitments;
- (vi) letters of credit, bills of lading, bills of sale; and
- (vii) documents showing evidence of an interest in funds or financial resources.

3. What is a prohibition on dispositions or “freezing of funds”?

“Freezing of funds” – which is the general term for imposing a comprehensive prohibition on dispositions – is defined in the financial sanctions regulations 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 any other change that would enable the funds to be used, including portfolio management.”

4. How does the freezing of accounts work?

Where a prohibition on dispositions under sanctions law (see question 3 above) is imposed on a person, enterprise or body, all funds and economic resources belonging to, owned, held or controlled by that person, enterprise or body shall thus be frozen by virtue of the EU Regulation as from its entry into force, without the need for any national legislation transposing said Regulation into national law. A credit institution holding the accounts of a listed person, enterprise or body must therefore, as from the entry into force of such a measure, prevent any kind of disposition of frozen funds (see Commission Guidance Note of 17 December 2020, C(2020) 9432 final, pp. 2 f.,

https://ec.europa.eu/info/sites/default/files/business_economy_euro/banking_and_finance/documents/201217-human-rights-guidance-note_en.pdf; for further information, see EU Best Practices Paper 8519/18, <https://data.consilium.europa.eu/doc/document/ST-8519-2018-INIT/en/pdf>).

5. Where are the difficulties in freezing accounts?

Credit institutions need to identify the accounts in question. As the freezing of funds has long been among the EU's repertoire of sanctions, credit institutions have corresponding processes at their disposal. The EU provides consolidated lists for this purpose. Corresponding software tools are available on the market.

6. What is a prohibition on making funds or economic resources available?

A prohibition on making funds or economic resources available is a targeted measure against certain natural or legal persons, enterprises or bodies expressly listed in the sanctions regulations. It stipulates a general prohibition on directly or indirectly putting at the disposal of the natural or legal persons, enterprises or bodies concerned any funds or assets that could be used by the recipient to obtain funds, regardless of the manner in which they are made available (sale, barter, return, gift, etc.). Prohibitions on making funds and economic resources available must also be observed for payments to countries that do not belong to the EU. Exemptions apply to the crediting of payments under legacy liabilities and of interest on frozen accounts. Moreover, payments to sanctioned natural or legal persons may be authorised by the Deutsche Bundesbank (Service Centre for Financial Sanctions) under certain conditions (e.g. to satisfy basic needs including payments for food, rent or mortgage, heating, etc.).

7. Can I still make payments to Russia or accept payments from Russia under the new financial sanctions against Russia?

As already explained in question 6 above, prohibitions on making funds and economic resources available are imposed as targeted measures on certain persons, enterprises or bodies. The other measures, too, that the Council of the European Union has adopted against the backdrop of the situation in Ukraine (including prohibitions on financing certain export business or measures to restrict access to the EU's financial market for certain enterprises and public bodies) pursue certain narrowly defined goals that are described in detail in the recitals of the new sanctions regulation. **The applicable Council Regulations contain neither a blanket ban on payments to Russia nor a general ban on accepting payments from Russia.** In cases of doubt, the Deutsche Bundesbank (Service Centre for Financial Sanctions) can provide information on this (see also question 8 (provision of financing or financial assistance)).

8. What is the provision of financing or financial assistance?

Prohibitions on the provision of financing or financial assistance cover any action, irrespective of the particular means chosen, 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.

9. Is the Bundesbank responsible for financial sanctions?

Under the Foreign Trade and Payments Act, 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.

Important: The Bundesbank does not have any substantive legal powers in the area of financial sanctions. In individual cases, it may therefore be necessary to agree on interpretation issues regarding the EU regulations with the competent Federal Ministry for Economic Affairs and Climate Action or the competent units in Brussels in order to ensure that the provisions are applied uniformly in the EU.

Operational activities related to the implementation of financial sanction measures are carried out by the Bundesbank’s Service Centre for Financial Sanctions in Munich. Where individual financial sanctions regimes provide for the possibility of granting special authorisations or imposing an authorisation requirement, the Deutsche Bundesbank (Service Centre for Financial Sanctions) is the authorising authority. In addition, the Bundesbank receives reports of frozen funds.

The Bundesbank’s Service Centres for External Sector Audits and Reporting Queries monitor compliance with financial sanctions in the financial industry by conducting on-site inspections. Information and the submission of documents may also be requested for this purpose.

IMPORTANT: 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. Applications for the authorisation of the sale or export of goods affected by sanctions should therefore be submitted to BAFA.

10. How does the Bundesbank verify whether German banks have actually blocked the accounts?

Financial sanctions regulations almost always 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 undue delay to the competent authorities of the Member States (in Germany: the Deutsche Bundesbank – Service Centre for Financial Sanctions) and to cooperate with these authorities in reviewing the information.

The Deutsche Bundesbank (Service Centre for Financial Sanctions) actively requests information on frozen accounts and amounts in Germany by means of email circulars to all credit institutions domiciled in Germany when financial sanctions are imposed on new sanctioned persons, entities or bodies or if names (including aliases) or other identifiers of persons, entities or bodies to which sanctions already apply change. In such email circulars, credit institutions are requested to report any frozen funds held with them to the Deutsche Bundesbank (Service Centre for Financial Sanctions). Credit institutions holding no frozen funds must submit a nil report.

Important: The information so reported is confidential and may only be used for the application and enforcement of the applicable financial sanctions in each case. The Bundesbank forwards said information to the competent Federal Ministry for Economic Affairs and Climate Action. The Bundesbank will not provide any details on said information to third parties.

In addition, the Bundesbank's Service Centres for External Sector Audits and Reporting Queries monitor compliance with financial sanctions in the financial industry by conducting on-site inspections. Information and the submission of documents may also be requested for this purpose.

11. How does the Bundesbank identify accounts of sanctioned banks or persons?

Identifying such accounts is the task of the account-servicing credit institutions. See the answers to questions 4 and 5.

12. How does the seizure of real assets work? Is the Bundesbank responsible for carrying this out? If not, who is?

The adoption of a prohibition on disposition does not involve any seizure of assets in the legal sense of the term. It is also the case here that the measures have immediate effect by act of law. The Federal Office for Economic Affairs and Export Control (BAFA) in Eschborn is responsible for the implementation of EU sanctions regarding economic resources.

13. How are dividend payments affected?

Dividends are among those funds which may not be provided and are frozen.

14. How high is the total current number of frozen accounts per country?

As already explained in question 10 above, credit institutions in Germany must report any frozen funds held with them to the Deutsche Bundesbank (Service Centre for Financial Sanctions). In accordance with the applicable EU legal acts, the information collected in this manner is, however, kept confidential and used only for the application and enforcement of said legal acts. The Bundesbank forwards said information to the competent Federal Ministry for Economic Affairs and Climate Action. The Bundesbank will not provide any details on said information to third parties.

15. Where are the frozen funds kept? Does each state confiscate the frozen account balances?

The frozen funds remain, unchanged, where they were at the time they were frozen. Confiscation of frozen funds for the benefit of the treasury is not part of the sanctions regime.

16. Is the purchase of securities or money market instruments issued by the Central Bank of Russia permitted?

It is prohibited to directly or indirectly purchase, sell, provide investment services for or assistance in the issuance of, or otherwise deal with transferable securities and money market instruments issued after 9 March 2022 by Russia and its government, the Central Bank of Russia, or a legal person, entity or body acting on behalf or at the direction of the Central Bank of Russia (Article 5a of Regulation (EU) No 833/2014).

17. Is a credit institution permitted to accept deposits from Russian nationals?

Generally:

It is prohibited to accept any deposits from Russian nationals or natural persons residing in Russia, or legal persons, entities or bodies established in Russia, if the total value of deposits of the natural or legal person, entity or body per credit institution exceeds €100,000 (Article 5b of Regulation (EU) No 833/2014).

The total value of €100,000 also applies to joint accounts held for multiple persons; the calculation of the total value includes all funds at the disposal (on an individual basis) of the person concerned. For example: A husband and wife – the husband falling under Article 5b of the Regulation, the wife not – have the following accounts at a credit institution:

- (a) a joint account belonging to both spouses (with the option “either to sign”);
- (b) the husband’s individual account;
- (c) the wife’s individual account, which her husband has no access to.

Joint account (a) and the husband’s individual account (b) are included in the calculation of the total value, but the wife’s individual account (c) is not.

Exceptions:

The prohibition on the acceptance of deposits in Article 5b does not apply to deposits which are necessary for non-prohibited cross-border trade in goods and services between the Union and Russia (Article 5b(3) of Regulation (EU) No 833/2014).

At the request of the account-servicing institution, the competent authority may authorise the acceptance of a deposit, under such conditions as it deems appropriate, after having determined that the acceptance of such a deposit satisfies one of the exemption clauses under Article 5c(1)(a) to (d) of Regulation (EU) No 833/2014.

18. Is there a reporting obligation for deposits held by Russian nationals?

The prohibition preventing EU banks from accepting deposits exceeding €100,000 held by Russian nationals or natural persons residing in Russia, or by legal persons, entities or bodies established in Russia (question 18) means that there is a reporting obligation for previously existing deposits exceeding this amount (Article 5g of Council Regulation (EU) No 833/2014).

Credit institutions are required to supply to the national competent authority of the Member State where they are located or to the Commission by no later than 27 May 2022, a list of deposits exceeding €100,000 held by Russian nationals or natural persons residing in Russia, or by legal persons, entities or bodies established in Russia. They shall provide updates regarding the amounts of such deposits every 12 months.

If the account-servicing institution is aware that the national or natural person residing in Russia has acquired citizenship or residence rights as part of a procedure that allows third-country nationals to acquire the citizenship of the Member State in exchange for predetermined payments and investments, it is likewise required to pass on this information to the competent authority in its report.

The Deutsche Bundesbank (Service Centre for Financial Sanctions) is the national competent authority in Germany for the receipt of reports under Article 5g of Council Regulation (EU) No 833/2014. Credit institutions in Germany shall be informed in due course of the requirements governing reports that are to be submitted pursuant to Article 5g of Council Regulation (EU) No 833/2014.

19. Is it permitted to sell euro-denominated transferable securities to Russian nationals or natural persons residing in Russia?

It shall be prohibited to sell euro-denominated transferable securities issued after 12 April 2022 or units in collective investment undertakings providing exposure to such securities, to any Russian national or natural person residing in Russia or any legal person, entity or body established in Russia (Article 5f of Council Regulation (EU) No 833/2014).

20. What does the SWIFT ban mean?

As from 12 March 2022, it shall be prohibited to provide specialised financial messaging services, which are used to exchange financial data, to certain banks listed in Annex XIV of Council Regulation (EU) No 833/2014 or to any legal person, entity or body established in Russia whose proprietary rights are directly or indirectly owned for more than 50% by an entity listed in said Annex (Article 5h of Council Regulation (EU) No 833/2014). This means that as from 12 March 2022, it shall no longer be possible to settle credit transfers to the listed credit institutions or their subsidiaries established in Russia via either the SWIFT system or any comparable systems.

At the current juncture (as at 7 March 2022), the following institutions and their subsidiaries in Russia are subject to the ban pursuant to Article 5h of Council Regulation (EU) 833/2014:

- Bank Otkritie;
- Novikombank;
- Promsvyazbank;
- Bank Rossiya;
- Sovcombank;
- VNESHECONOMBANK (VEB); and
- VTB BANK;

as well as any legal persons, entities or bodies established in Russia whose proprietary rights are directly or indirectly owned for more than 50% by one of the institutions listed above.

21. Is it permitted to import euro banknotes to Russia?

Pursuant to Article 5i of Council Regulation (EU) No 833/2014, it is prohibited to sell, supply, transfer or export euro-denominated banknotes to Russia or to any natural or legal person, entity or body in Russia, including the government and the Central Bank of Russia, or for use in Russia. Pursuant to paragraph (2) of said Regulation, the prohibition shall not apply to the sale, supply, transfer or export of euro-denominated banknotes provided that this is necessary for the personal use of natural persons travelling to Russia or for official purposes, e.g. diplomatic missions, consular posts or international organisations in Russia.

22. Is it permitted to invest in Russian Direct Investment Fund projects?

It is generally prohibited to invest in, participate in or otherwise contribute to projects co-financed by the Russian Direct Investment Fund (Article 2e(3) of Council Regulation (EU) No 833/2014). The competent authorities may, under certain conditions, authorise exemptions in the case of legacy contracts (paragraph (4) of the Regulation).

23. Does Council Regulation (EU) No 833/2014 apply only within the territory of the Union or outside it as well?

The scope of application of Council Regulation (EU) No 833/2014 is set out in Article 13 thereof. Namely, it applies:

- (a) within the territory of the Union;
- (b) on board any aircraft or any vessel under the jurisdiction of a Member State;
- (c) to any 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.