DEUTSCHE BUNDESBANK
EUROSYSTEM

Guidance notes on compliance with financial sanctions

Last updated: June 2024

Contents

These guidance notes are published by the Deutsche Bundesbank for information purposes. They set out key points and are in no way intended to be exhaustive. Last updated: June 2024

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 UN Security Council decisions 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 and temporary restrictions to transpose UN Security Council resolutions pursuant to Section 5a(1) 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* – AWV), infringements of legal acts imposing financial sanctions may be punished as an administrative offence or in certain cases also 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).

These guidance notes are 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 parties with obligations in this regard[2] are expected to take in order to successfully guard against infringement of financial sanctions.

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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 Bundesbank is responsible for the implementation of EU sanctions in Germany insofar as these relate to "funds" within the meaning of sanctions legislation. The term "funds" refers, for the purposes of sanctions legislation, 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 and derivatives contracts as well as interest, dividends, credit, guarantees, letters of credit and documents showing evidence of an interest in funds, etc.[3]

Operational activities related to the implementation of sanctions 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.

The German Federal Office of Economics and Export Control (*Bundesamt für Wirtschaft und Ausfuhrkontrolle* or BAFA) implements sanctions measures administratively insofar as they concern goods, technical assistance or (other) economic resources.

The Central Office for Sanctions Enforcement (*Zentralstelle für Sanktionsdurchsetzung* or ZfS) has the task[4] of ensuring the enforcement within Germany of the economic sanctions measures adopted by the Council of the European Union in relation to its common foreign and security policy. In this context, its responsibilities include monitoring compliance with the restrictions on dispositions and prohibitions on making funds and economic resources available, unless the Bundesbank or the Federal Office of Economics and Export Control (BAFA) is responsible under the Foreign Trade and Payments Act.

Where the violation is uncovered in-house (Section 22(4) of the Foreign Trade and Payments Act), notifications shall be made to the principal customs office responsible as administrative authority.

3 The relevant regulations contain a definition of the term "funds"; 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) or Article 1 letter (g) of Council Regulation (EU) No 269/2014 (Russia sanctions regime).

4 For more on the tasks and powers of the Central Office for Sanctions Enforcement, see the Act on the Enforcement of Economic Sanctions Measures or Sanctions Enforcement Act for short (Sanktionsdurchsetzungsgesetz or SanktDG), in particular Sections 1 and 2.

III. Individual measures – an overview

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

Measures targeted at specific (natural and legal) persons, entities or bodies listed in the annexes to the various EU sanctions regulations which restrict dispositions and prohibit the making available of funds and economic resources to such persons, entities or bodies are amongst the most important and severe financial sanctions measures.

The **"freezing of funds"** (which is how a comprehensive restriction on dispositions is typically referred to) is defined in the financial sanctions regulations[5] 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/enterprises in the financial sector whose clients and/or counterparties include sanctioned persons, entities or bodies are therefore required to ensure that any funds belonging to these persons, entities or bodies are not moved (without official authorisation) or otherwise used in contravention of the restriction on dispositions.

Important: Restrictions on dispositions enacted by financial sanctions legislation relate not only to funds under the **ownership** of a particular person, entity or body 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 from directly or indirectly benefiting sanctioned persons, entities or bodies.

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. as a general rule, 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:

5 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).

– find out about existing financial sanctions 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) and the Bundesbank's "Frequently asked questions on financial sanctions" contain further assistance on how to determine whether funds are controlled by a sanctioned person, entity or body, where an indirect provision of funds to a sanctioned person, entity or body 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).

In some sanctions regimes, there are additionally extensive transaction prohibitions[6] which, in their legal effects, sometimes go beyond the effects of restrictions on dispositions and prohibitions on making funds and economic resources available, and sometimes fall short of them.

B. Prohibitions relating to the financial and capital markets

Some sanctions regimes contain prohibitions or restrictions aimed at preventing or restricting the access of certain groups of persons, enterprises or government actors to the financial and capital markets of the European Union.

These include, first, prohibitions or restrictions on accepting deposits from certain groups of persons or legal persons, entities or bodies.[7]

In addition, certain sanctions regimes impose restrictions on transferable securities and money market instruments. Such regulations may prohibit the purchase, sale or other legal acts in respect of transferable securities and money market instruments of issuers which may either be explicitly listed in the annexes to the relevant regulations or described in general terms.[8] It may likewise be prohibited to list and provide services for certain securities, or to admit such securities to trading.[9] In addition to these rules, it may also be prohibited to grant loans[10] or provide new financing, including the provision of investment services, to certain enterprises in certain sectors[11] (see also III.D below).

Alternatively, there are prohibitions on selling transferable securities to certain groups of persons or legal persons, entities or bodies,[12] and prohibitions on

6 See, for example, Article 5aa(1) of Council Regulation (EU) 833/2014.
7 See, for example, Article 5b(1) of Council Regulation (EU) 833/2014.
8 See, for example, Article 5(1) to (4) and Article 5a(1) of Council Regulation (EU) 833/2014.
9 See, for example, Article 5(5) of Council Regulation (EU) 833/2014.
10 See, for example, Article 5(6) and Article 5a(2) of Council Regulation (EU) 833/2014.
11 See, for example, Article 3a(1) and (2) of Council Regulation (EU) 833/2014.
12 See, for example, Article 5f(1) of Council Regulation (EU) 833/2014.

providing services for securities issued to certain groups of natural persons or legal persons, entities or bodies.[13] Sanctions rules may also include prohibitions on transactions related to the management of reserves as well as of assets of the central banks of certain countries.[14]

Prohibitions relating to the financial and capital markets also include prohibitions on providing credit rating services[15] and providing access to corresponding subscription services.[16] In addition, some sanctions regimes prohibit the sale, supply, transfer or export of banknotes denominated in any official currency of a Member State to certain countries, persons, entities or bodies or for use in certain countries.[17]

C. Restrictions on payment transactions

In some cases, EU financial sanctions not only impose restrictions on dispositions and prohibitions on making funds and economic resources available in respect of certain persons, entities or bodies, but also place general restrictions on payment transactions involving certain countries (prohibitions, authorisation and/or notification requirements).

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, only the EU's financial sanctions regime against North Korea includes general restrictions on payment transactions (see Chapter IV of Council Regulation (EU) 2017/1509).[18]

Restrictions on payment transactions may also include prohibitions on providing specialised financial messaging services, which are used to exchange financial data.[19]

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13 See, for example, Article 5e(1) of Council Regulation (EU) 833/2014.
14 See, for example, Article 5a(4) of Council Regulation (EU) 833/2014.
15 See, for example, Article 5j(1) of Council Regulation (EU) 833/2014.
16 See, for example, Article 5j(2) of Council Regulation (EU) 833/2014.
17 See, for example, Article 5i(1) of Council Regulation (EU) 833/2014.
18 Irrespective of this, there are specific restrictions in place with respect to what are known as "high-risk jurisdictions subject to a call for action" as 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, North Korea and Myanmar 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.
19 See, for example, Article 5h of Council Regulation (EU) 833/2014.

D. Prohibitions and authorisation requirements applying to the provision of financing and financial assistance and to insurance, investment bans

Certain financial sanctions regimes contain restrictions (prohibitions or authorisation requirements) on the provision of financing or financial assistance in connection with trade in certain goods or services[20] or in respect of goods and services of a certain origin.[21] 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.

"Financing or financial assistance" shall mean, in particular but not exclusively, the disbursement of grants, loans, guarantees, suretyships, bonds, letters of credit, supplier credits, buyer credits, import or export advances and, in some sanctions regimes, all types of insurance and reinsurance, including export credit insurance.[22]

Certain sanctions regimes also impose more extensive prohibitions on investment, financing and participations on persons, entities or bodies active in certain sectors[23] (see also III.B above). In addition, there are such prohibitions in relation to certain areas[24] or projects cofinanced by certain named persons, entities or bodies.[25]

Finally, there are prohibitions on providing public financing or financial assistance for trade with, or investment in, these countries.[26]

Institutions/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.

20 See, for example, Article 2(2) letter (b) of Council Regulation (EU) 833/2014.
21 See, for example, Article 2(1) letter (b) of Council Regulation (EU) 2022/263.
22 See, for example, Article 1 letter (o) of Council Regulation (EU) 833/2014.
23 See, for example, Article 3a(1)and (2) of Council Regulation (EU) 833/2014.
24 See, for example, Article 3(1) of Council Regulation (EU) 2022/263.
25 See, for example, Article 2e(3) of Council Regulation (EU) 833/2014.
26 See, for example, Article 2e(1) of Council Regulation (EU) 833/2014.

E. Sanctions relating to crypto-assets

In principle, crypto-assets are also covered by restrictions on dispositions and prohibitions on making funds and economic resources available and other sanctions rules where applicable, as they fall under the term "funds" as defined by financial sanctions legislation and may also be covered by the term "financing and financial assistance". Some sanctions regimes also include restrictive measures that explicitly include crypto-assets.[27] In some sanctions regimes, there are also prohibitions on providing crypto-asset wallet, account or custody services to certain persons, entities or bodies.[28]

Against this backdrop, it should be noted that the broad anonymity or pseudonymity of individual crypto-assets can pose a risk to compliance with financial sanctions, as crypto-assets can be used as an alternative means of payment by sanctioned natural and legal persons, entities or bodies. The inherently high degree of pseudonymisation can lead to difficulties in identifying the relevant actors, as there may be little information available to link the pseudonyms involved in transactions to real entities. This risk was addressed nationally in the German Crypto Asset Transfer Regulation (*Kryptowertetransferverordnung*). The current recast version of the EU Funds Transfer Regulation[29] likewise expands its scope to include crypto-asset service providers and/or crypto-asset transfers. When transferring crypto-assets, the service provider of the payer shall ensure that information on the identity of the payer and the payee is transmitted to the service provider of the payee. This is intended to ensure that such transactions are traceable.

In principle, it is important to ensure compliance with the applicable financial sanctions also in transactions involving crypto-assets. Consequently, the "best practices" described in these guidance notes also apply if crypto-assets are affected.

F. Sanctions related to insurance

In addition to industry-specific prohibitions on "financing or financial assistance" (these rules may also apply to insurance), some sanctions regulations also include a general prohibition on insuring certain persons, entities or groups. Such prohibitions apply irrespective of the design of the insurance contract and must be observed by all insurance companies.[30]

Moreover, the mere commitment to disburse funds upon the occurrence of a future event does not yet constitute "funds" within the meaning of sanctions legislation.[31] An insurance contract with a sanctioned person, entity or body may therefore be permissible.[32] If, however, sanctioned persons, entities or bodies have concrete claims in the form of claims on money

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27 For example, Council Regulation (EU) 2022/394 expanded the term "transferable securities" to include crypto-assets.
28 See, for example, Article 5b(2) of Council Regulation (EU) 833/2014.
29 Regulation (EU) 2023/1113 of the European Parliament and of the Council of 31 May 2023 on information accompanying transfers of funds and certain crypto-assets and amending Directive (EU) 2015/849.
30 For example, a prohibition of providing insurance to the State of Syria, its government or its public bodies, corporations and agencies; see Article 26 of Council Regulation (EU) 36/2012 (Syria Regulation).
31 For more on the term "funds", see, for example, Article 1 letter (l) of Council Regulation (EU) 267/2012 – Iran.
32 Under certain circumstances, however, the provision of insurance coverage can be regarded as providing an "economic resource"

against the insurance undertaking, these constitute "funds" under sanctions legislation. Such claims may not be met because of the prohibition on financing and financial assistance, they are frozen and must be reported to the Bundesbank's Service Centre for Financial Sanctions.

Insurance coverage is classified as an economic resource if the insurance benefit can be used to obtain funds, goods or services.[33] This is regularly the case with insurance policies that can be sold in exchange for money, such as an assignable credit or capital life insurance policy. Frozen economic resources must be reported to the responsible Federal Office for Economic Affairs and Export Control (BAFA).

Many sanctions regulations also contain prohibitions or authorisation requirements for financing or financial assistance (see Section III.D). Accordingly, insurance contracts relating to trade transactions, e.g. export credit insurance, but sometimes also other insurance contracts or reinsurance, must be carefully reviewed by insurance companies to ascertain whether sanctions apply.

G. Reporting requirements

1 General responsibility of German Federal Office of Economics and Export Control and Bundesbank

The effective use of financial sanctions by the European Union 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 relation to funds and financing/financial assistance, this will generally be the Bundesbank in Germany) and to cooperate with these authorities in reviewing the information.[34] Some sanctions regulations also include special reporting requirements for certain matters, such as, for instance, the existence of deposits held by certain account holders pursuant to Article 5g of Council Regulation (EU) 833/2014 (Russia sanctions regime).

The responsibilities described above under Section II also apply to reporting under sanctions legislation, i.e. the Bundesbank is generally responsible for the receipt of reports provided these relate to funds as defined in sanctions legislation or to gold; BAFA, meanwhile, is generally responsible for the receipt of reports relating to goods, technical assistance or other economic resources (however, see point 2

33 See the definition of "economic resource", e.g. in Article 2 letter (d) of Council Regulation (EU) 269/2014 – Russia/Ukraine.
34 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) No 2017/1509, there is also an obligation to notify the Financial Intelligence Unit (FIU). This shall be without prejudice to other reporting obligations pursuant to Section 43 of the Money Laundering Act (Geldwäschegesetz – GWG).

below). The following email address of the Bundesbank's Financial Sanctions Service Centre (SZ FiSankt) can be used for reports:

sz.finanzsanktionen@bundesbank.de

SZ FiSankt actively requests information on frozen accounts and amounts in Germany by means of email circulars sent, in particular, 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, entities or bodies 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/enterprises in the financial sector have the relevant processes in place and that these function reliably.

2 Special responsibility of the Central Office for Sanctions Enforcement

Provided that no other reporting requirement already exists under a directly applicable legal act of the European Communities or of the European Union serving to implement an economic sanction measure adopted by the Council of the European Union in relation to its common foreign and security policy, foreigners within the meaning of Section 2(5) of the Foreign Trade and Payments Act and residents within the meaning of Section 2(15) of the Foreign Trade and Payments Act, against whom EU restrictions on dispositions and/or prohibitions on making funds and economic resources available under sanctions legislation are in force, are obliged to report any funds or economic resources within the scope of the Sanctions Enforcement Act which they own or possess or which they hold or control without delay to the **Central Office for Sanctions Enforcement (see Form 033400 at** https://zoll.de) and to cooperate with the Central Office for Sanctions Enforcement in checking such information.

IV. Information on sanctions regimes and interpretative guidance

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

https://www.bundesbank.de/de/service/finanzsanktionen/sanktionsregimes (in German only).

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) 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://data.europa.eu/data/datasets/consolidated-list-of-persons-groups-and-entities-subject-to-eu-financial-sanctions?locale=en

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

https://www.finanz-sanktionsliste.de/fisalis/

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/de/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).

Further interpretation guidance can also be found in the Bundesbank's "Frequently asked questions on financial sanctions" at

https://www.bundesbank.de/en/homepage/frequently-asked-questions-on-financial-sanctions-879838,

and in the European Commission's "Frequently asked questions" at

https://finance.ec.europa.eu/eu-and-world/sanctions-restrictive-measures/sanctions-adopted-following-russias-military-aggression-against-ukraine/frequently-asked-questions-sanctions-against-russia_en.

V. "Best practices" for compliance with financial sanctions

To ensure compliance with financial sanctions, institutions/enterprises in the financial sector 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)[35] 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 there is found to have been a breach of a financial sanctions regime 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 respective institution/enterprise in the financial sector aware of the inadequate controls or processes that led to the breach (for example, in the context of an external sector audit).

The "best practices" are principle-oriented. Unlike rule-based requirements, only the objective is specified, not a specific implementation route.

Furthermore, the principle of "dual proportionality" applies. This means that the specific implementation of the principles outlined below must be consistent with the nature, scope, complexity and risk content of the business activities of the respective enterprise. The intensity of the Bundesbank's monitoring of compliance with financial sanctions is also based on these criteria.

The principles set out in the "best practices" apply to financial transactions (in particular banking transactions, securities transactions, financial services and insurance transactions of any kind) and other activities that form part of the core business of the respective enterprise (e.g. leases in the case of real estate funds), as well as the related organisational and operational structure of the business, including the associated internal control system in place. Outside this area (e.g. when procuring office supplies), the general legal requirements applicable to everyone must be observed.

35 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.

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 instructions or workflow descriptions for the compliance function and, where applicable, decentrally for individual business areas. 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 shall be amended in a timely manner in the event of changes to 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. The handbooks and work instructions must provide for appropriate controls and other risk mitigation measures to be set up in the business processes.

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, shall 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 for 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 should 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*)). They must be made available without delay upon request. 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.

The appropriateness and suitability of IT-based screening systems must be assessed before a model is used and reviewed regularly during operation. This requires sufficient knowledge of the design of the systems, particularly key assumptions and parameters.

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

Outsourcing is based on a written outsourcing contract that clearly defines the responsibility for carrying out checks of compliance with financial sanctions rules. 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.

For clarification, it should be noted that domestic branches and permanent establishments of non-residents are deemed legally independent pursuant to Section 3(1) sentence 1 of the Foreign Trade and Payments Act. The above requirements therefore apply to them accordingly.

C. Requirements for compliance with financial sanctions rules for all enterprises in the financial sector

1 General requirements

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, entities and bodies as well as to effectively implement other financial sanctions rules. This also includes procedures to prevent the indirect provision of funds and economic resources and the circumvention of financial sanctions rules. To this end, scenarios should be defined and regularly reviewed which may indicate, either judging by past experience or in theory, indirect sanctioned persons or activities or a circumvention of sanction rules ("red flags"). Measures must also be taken with regard to counterparties that are not themselves listed in order to identify any control on the part of listed persons, entities or bodies. These measures may, in terms of their nature, be orientated to the requirements of anti-money laundering legislation relating to the detection and identification of a potential beneficial owner, taking into account the preconditions under sanctions law for the assumption of control. 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.

2 New clients/counterparties and other persons involved in transactions, transactions outside a business relationship

As part of the on-boarding of new clients/counterparties and other persons involved in transactions (e.g. beneficiaries of guarantee credit agreements, participants in project and trade financing who are not the clients/counterparties, or beneficiaries of insurance policies who are not the policyholder), apart from legally standardised exceptions, their identity must be established by reference to official ID documents. After this, screening to identify possible sanctions must be performed (prior to granting access rights or otherwise permitting the disposition of funds[36], if not sooner). The names and data of the clients/counterparties and other persons involved in transactions must be recorded correctly and the screening documented in an appropriate manner. This includes all the information necessary to ensure compliance with financial sanctions rules. Other persons who may be able to dispose of funds managed in the context of the customer relationship must be identified and subject to sanctions screening. The same applies to beneficial owners as ascertained by the institution/enterprise. Even if transactions are intended to be carried out outside of an existing business relationship, identifying the counterparty and screening them for sanctions may be warranted. Insofar as measures are taken to comply with due diligence requirements under anti-money laundering regulations and information is thereby generated that may also be relevant for compliance with financial sanctions, this information must also be included in the screening processes.

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

3 Clients/counterparties and other persons involved in transactions

After the entry into force of a legal act containing new sanctions against certain natural or legal persons, entities or bodies, all clients/counterparties and other persons involved in a transaction must be screened for matches. By way of derogation from this, payment service providers offering real-time credit transfers will be obliged from 9 January 2025 to review their own client base at least once a day, irrespective of the publication of new relevant legal acts (see Art. 5d of Regulation (EU) 260/2012 (known as the SEPA Regulation)).

After the entry into force of a legal act containing new sanctions against groups of persons, entities or bodies determined by general characteristics, appropriate measures must be taken to identify, on the basis of the information available within the enterprise, the clients/counterparties and other persons involved in transactions to whom the characteristics apply. In individual cases, it may also be necessary to collect data required to identify potentially affected clients/counterparties or to obtain such data from external data providers.

Before the aforementioned measures can be carried out, screening must take place of all clients/counterparties, other persons involved in transactions and, where applicable, persons, entities and bodies authorised or entitled to act in business relationships on their behalf, and the beneficial owners. The sanction-relevant data of clients/counterparties and persons involved in transactions must be updated at a frequency which takes account of developments in sanctions law and on an ad hoc basis. The anti-money laundering requirements for updating client data must be applied accordingly.

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). For clarification, it should be noted that existing reporting obligations must be complied with irrespective of the Bundesbank's circulars.

4 De-listings

Accounts/custody accounts/assets that have been blocked on the basis of prohibitions of disposal under sanctions law (listings) may only be unblocked once the corresponding de-listings have entered into force.

D. Specific requirements for financial institutions other than insurance and reinsurance companies

1 General requirements

Appropriate safeguards must be put in place to prevent sanctions violations. This includes setting up appropriate client-related or account-related blocks.

In particular, the following measures must be taken:

(a) To prevent breaches of restrictions on dispositions, accounts and custody accounts held for or controlled by sanctioned persons, entities and bodies must be blocked without delay.

(b) To prevent breaches of prohibitions on making funds and economic resources available, disbursements to clients/third parties listed on a sanctions list must be prevented, e.g. by means of suitable blocks. Safeguards must also be put in place to prevent payments that would constitute a prohibited indirect provision of funds (see Section C.1).

(c) In order to prevent violations of transaction prohibitions relating to individual persons and other sanctions provisions relating to persons, entities or bodies or to their status, such as those in the area of securities or crypto services, the corresponding sanction status must be recorded in the customer master data.

(d) To prevent breaches of deposit bans, appropriate monitoring measures must be put in place to prevent unauthorised credits from being made.

2 Additional requirements in the area of trade and project financing and for (the financing of) participations and investments

Trade financing refers to 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.

With regard to trade and project financing and (the financing of) participations and investments, at least prior to their conclusion and in each case prior to the execution of transactions, 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 screened for sanctions using up-to-date sources, provided that those concerned are not already included in the customer master data and are, as such, already covered by ad hoc or regular screening of all clients/counterparties and other persons involved in transactions. This is to make sure that providing the financing will not entail negligent infringement of any existing restrictions on dispositions, prohibitions on making funds and economic resources available, or prohibited transactions.

In addition to restrictions on dispositions or prohibitions on making funds and economic resources available 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, for example, to the good or service[37] to be traded or to the type of project[38]. In addition, certain investments or participations may also be prohibited as such. 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 goods or armaments. 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. In addition, the available documents on a planned transaction must be checked to see whether they provide any indications of sanctionable transactions. If the transaction is relevant from a sanctions perspective (provided the transaction is not prohibited outright), an application for authorisation of provision of financing or financial assistance can be submitted to the Bundesbank's Service Centre for Financial Sanctions.

3 Additional requirements for the provision of payment services, the operation of payment systems and the transfer of crypto-assets

For the cross-border execution of payment services, cross-border transactions in the operation of payment systems and the cross-border transfer of crypto-assets, at least the following fields must be compared with the current sanction lists: (payment) recipient (beneficiary), (payment) service provider of the recipient, payer/originator, (payment) service provider of the payer/originator and details of payment (e.g. via a keyword search). Under certain circumstances, it may be possible to draw on findings obtained as part of the ongoing screening of the customer base (see point 2 above), so that, for example, in the case of incoming payments, the screening of a payee who has already been checked as a client can be omitted.

The data of the (payment) recipients and their (payment) service providers must also be screened for any predefined red flags that indicate the exercising of control by a sanctioned person (e.g. in general terms or specifically the control relationship known to the individual credit institution).

Some differences arise in the settlement of real-time credit transfers within the meaning of Art. 2 No 1a of the SEPA Regulation. In accordance with Art. 5d (2) of the SEPA Regulation, the payment service providers of the payer and the payee do **not** check during the execution of a real-time credit transfer whether the payer or payee whose payment accounts are used to carry out this real-time credit transfer are persons or bodies subject to a sanctions-related restriction on dispositions or prohibition on making funds and economic resources available. In accordance with Article 5d (3) of the SEPA Regulation, the deadline for implementing this provision is 9 January 2025.

For the time being, in the case of electronic domestic German payment transactions, including credit transfers not executed as real-time credit transfers, the institution of the originator 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) 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.

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37 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)(b) of Council Regulation (EU) 2017/2063).
38 Example: construction of a power station in Syria (see Article 12(1)(b) of Council Regulation (EU) 36/2012).

4 Securities transactions

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

It is also necessary to ensure that any specific restrictions (e.g. prohibition of trading certain securities, prohibition of selling securities to certain groups of persons, entities and bodies) are complied with. This includes appropriate measures for dealing with derivatives, funds and comparable financial products.

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.

5 Requirements in relation to crypto-assets

As crypto-assets are generally covered by restrictions on dispositions and prohibitions on making funds and economic resources available and other sanctions rules where applicable, the "best practices" described in these guidance notes also apply if crypto-assets are concerned (see III. E.). In addition, appropriate measures must be taken to comply with specific restrictions related to crypto-assets.

E. Specific requirements for insurance and reinsurance companies

1 New and existing insurance contracts

Full screening of new business must be carried out before the given transaction is concluded. In the case of an identity-linked prohibition on providing insurance, all roles (policyholder, insured person, beneficiary, etc.) must be screened. Existing insurance contracts must be screened if new regulations require the termination of existing insurance contracts. However, new sanction regulations frequently apply only to new business.

In the case of existing contracts, safeguards should be put in place to comply with restrictions on dispositions and prohibitions on the making available of funds and economic resources that exist in relation to clients and/or other persons involved in the contracts, as monetary claims of sanctioned persons, entities and bodies against the insurance company are frozen and must be reported to the Bundesbank's Service Centre for Financial Sanctions.

2 Insurance premiums and payments of benefits

Any disbursement, modification or renewal of an insurance contract must be screened for potential sanctions violations.

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