



Sanctions Against Russia: Application in the Romanian Jurisdiction

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Russian officials, banks, companies, and even individual businesspersons are subject to several packages of international sanctions which have been imposed by the EU, USA, UK and others following the Russia-Ukraine armed conflict.¹

Romania, as part of the EU, has started to implement the sanctions imposed to Russia by the EU bodies. To this end, while the regulations and decisions adopted by the EU bodies are directly effective in Romania, the Romanian authorities need to take certain steps in order to ensure the practical implementation of particular sanctions.

This brief will present in summary (i) the legal framework for adopting the sanctions against Russia at the EU level, (ii) the EU's future plans to prevent the circumvention of international sanctions, (iii) the legal framework for implementing the sanctions in Romania at a national level, (iv) the steps taken by Romanian authorities, (v) the standard of diligence for complying with EU sanctions obligations, and finally (vi) the current status of implementing the sanctions in Romania.

¹ See, for example, the list of restrictive measures adopted by the European Union in response to the crisis in Ukraine - <https://www.consilium.europa.eu/en/policies/sanctions/restrictive-measures-against-russia-over-ukraine/> (last accessed on 21 April 2023).

I The EU Legal Framework for Adopting the Sanctions

Under Article 215 of the Treaty on the Functioning of the European Union, the EU may adopt restrictive measures aimed at the interruption or reduction, in part or completely, of economic and financial relations with one or more third countries.

So far, the EU has adopted eleven packages of restrictive measures against Russia, through a series of regulations and decisions.

The **first package** of sanctions was adopted on 23 February 2022 and includes, for example:

- Freezing all funds and economic resources belonging to, owned, held or controlled by 336 members of the Russian State Duma;²
- Restrictions to trading and other dealings with transferrable securities by Russia, the Russian Government, the Russian Central Bank, or by any person acting on their behalf;³
- Import bans and restrictions to investments from the areas of the Donetsk and Luhansk not controlled by Ukraine.⁴

The **second package** of sanctions was adopted on 25 February 2022 and includes, for example:

- Freezing all funds and economic resources belonging to, owned, held or controlled by certain Russian officials, as well as travel bans on the EU territory;⁵
- A prohibition to trade with any Russian person or entity, or to provide technical or financial assistance in respect of certain goods which may be used for military purposes;⁶

² Council Implementing Regulation (EU) 2022/261 of 23 February 2022, published in the Official Journal of the EU L042I of 23 February 2022.

³ Council Decision (CFSP) 2022/264 of 23 February 2022, published in the Official Journal of the EU L042I of 23 February 2022.

⁴ Council Regulation (EU) 2022/263 of 23 February 2022, published in the Official Journal of the EU L042I of 23 February 2022.

⁵ Council Implementing Regulation (EU) 2022/332 of 25 February 2022, published in the Official Journal of the EU L053 of 25 February 2022; Council Decision (CFSP) 2022/329 of 25 February 2022, published in the Official Journal of the EU L050 of 25 February 2022.

⁶ Council Regulation (EU) 2022/328 of 25 February 2022, published in the Official Journal of the EU L053 of 25 February 2022.

- Financial sector sanctions for credit institutions or entities controlled by them, Russian nationals or natural persons residing in Russia, or legal entities or bodies established in Russia.⁷

The **third package** of sanctions was adopted from 28 February to 9 March 2022 and includes, for example:

- Flight restrictions to, from and over the EU for any Russian air carriers or aircrafts;⁸
- Excluding several Russian banks from the SWIFT messaging system;⁹
- Freezing the assets of certain businesspersons involved in key economic sectors of the Russian Federation.¹⁰

The **fourth package** of sanctions was adopted on 15 March 2022 and includes, for example:

- Asset freezing and travel bans for certain Russian individual and entities;¹¹
- Trade restrictions for iron, steel and luxury goods originating in Russia or exported from Russia.¹²

The **fifth package** of sanctions was adopted on 8 April 2022 and includes, for example:

- A ban of imports of coal and other solid fossil fuels if they originate in Russia or are exported from Russia;¹³
- A prohibition to transport goods by road in the territory of the EU for any road transport undertaking established in Russia, as well as a prohibition to provide access to ports in the

⁷ Council Decision (CFSP) 2022/327 of 25 February 2022, published in the Official Journal of the EU L048 of 25 February 2022.

⁸ Council Regulation (EU) 2022/334 of 28 February 2022, published in the Official Journal of the EU L0571 of 28 February 2022.

⁹ Council Decision (CFSP) 2022/346 of 1 March 2022, published in the Official Journal of the EU L063 of 2 March 2022.

¹⁰ Council Implementing Regulation (EU) 2022/396 of 9 March 2022, published in the Official Journal of the EU L080 of 9 March 2022.

¹¹ Council Implementing Regulation (EU) 2022/427 of 15 March 2022, and Council Decision (CFSP) 2022/429 of 15 March 2022, published in the Official Journal of the EU L0871 of 15 March 2022.

¹² Council Regulation (EU) 2022/428 of 15 March 2022, published in the Official Journal of the EU L0871 of 15 March 2022.

¹³ Council Regulation (EU) 2022/576 of 8 April 2022 and Council Decision (CFSP) 2022/578 of 8 April 2022, published in the Official Journal of the EU L111 of 8 April 2022.

EU to any vessel registered in Russia (or which has changed its registration from Russia to another state after 24 February 2022);¹⁴

- A prohibition to award or continue the execution of public or concession contracts falling under the EU public procurement legislation, with Russian nationals, entities and bodies, including their affiliates;¹⁵
- A prohibition to provide a registered office, business or administrative address, management services, a trust or other such arrangements to Russian nationals, entities and other related bodies;¹⁶
- A prohibition to accept deposits from, or provide crypto-asset wallets to, Russian nationals, entities, banks and other related bodies;¹⁷
- Freezing the assets of further 216 individuals (including businesspersons and officials) and 18 entities from Russia.¹⁸

The **sixth package** of sanctions was adopted on 3 June 2022 and includes, for example:

- A ban on purchasing, import or transfer of crude oil or petroleum products if they originate in Russia or are exported from Russia, with exceptions. Notably, the prohibition is not applied to certain crude oil delivered by pipeline from Russia into Member States;¹⁹
- A prohibition to provide certain services to Russia or legal persons, entities or bodies established in Russia, including auditing, accounting, bookkeeping, business and management consulting or PR services, with exceptions;²⁰

¹⁴ Council Regulation (EU) 2022/576 of 8 April 2022 and Council Decision (CFSP) 2022/578 of 8 April 2022, published in the Official Journal of the EU L111 of 8 April 2022.

¹⁵ Council Regulation (EU) 2022/576 of 8 April 2022 and Council Decision (CFSP) 2022/578 of 8 April 2022, published in the Official Journal of the EU L111 of 8 April 2022.

¹⁶ Council Regulation (EU) 2022/576 of 8 April 2022 and Council Decision (CFSP) 2022/578 of 8 April 2022, published in the Official Journal of the EU L111 of 8 April 2022.

¹⁷ Council Regulation (EU) 2022/576 of 8 April 2022 and Council Decision (CFSP) 2022/578 of 8 April 2022, published in the Official Journal of the EU L111 of 8 April 2022.

¹⁸ Council Implementing Regulation (EU) 2022/581 of 8 April 2022, published in the Official Journal of the EU L110 of 8 April 2022.

¹⁹ Council Regulation (EU) 2022/879 of 3 June 2022 and Council Decision (CFSP) 2022/883 of 3 June 2022, published in the Official Journal of the EU L153 of 3 June 2022.

²⁰ Council Regulation (EU) 2022/879 of 3 June 2022 and Council Decision (CFSP) 2022/883 of 3 June 2022, published in the Official Journal of the EU L153 of 3 June 2022.

- An expansion of the list of advanced technology items banned from export to Russia, with respect to certain chemicals;²¹

Allowing the Member states to establish criminal sanctions for breaching the sanctions regime against Russia, as well as to adopt measures for seizing the assets resulting from such breaches.²²

The **seventh package** of sanctions was adopted on 21 July 2022 and includes, for example:

- A prohibition to purchase, import or transfer gold into the Union or to any third country if it originates in Russia and it has been exported from Russia. The prohibition also applied to jewellery, but not if it is for personal use of individuals and not intended for sale;²³
- An exemption from the ban on entering into transactions with Russian entities, provided the transactions are strictly necessary to ensure judicial, administrative or arbitral proceedings in a Member State or for the recognition or enforcement of a judgment or award rendered in a Member State;²⁴
- Freezing the assets of further 48 individuals and 9 entities from Russia.²⁵

The **eighth package** of sanctions was adopted on 6 October 2022 and includes, for example:

- A price cap to maritime transport of Russian crude oil and certain petroleum products to third countries;²⁶
- A prohibition to sell, supply, transfer or export certain firearms (including their parts/components) and ammunition to any natural or legal person or body in Russia or for use in Russia;²⁷

²¹ Council Regulation (EU) 2022/879 of 3 June 2022 and Council Decision (CFSP) 2022/884 of 3 June 2022, published in the Official Journal of the EU L153 of 3 June 2022.

²² Council Regulation (EU) 2022/880 of 3 June 2022, published in the Official Journal of the EU L153 of 3 June 2022.

²³ Council Regulation (EU) 2022/1269 of 21 July 2022 and Council Decision (CFSP) 2022/1271 of 21 July 2022, published in the Official Journal of the EU L193 of 21 July 2022.

²⁴ Council Regulation (EU) 2022/1269 of 21 July 2022 and Council Decision (CFSP) 2022/1271 of 21 July 2022, published in the Official Journal of the EU L193 of 21 July 2022.

²⁵ Council Implementing Regulation (EU) 2022/1270 of 21 July 2022, published in the Official Journal of the EU L193 of 21 July 2022.

²⁶ Council Regulation (EU) 2022/1904 of 6 October 2022 and Council Decision (CFSP) 2022/1909 of 6 October 2022, published in the Official Journal of the EU L259 of 6 October 2022.

²⁷ Council Regulation (EU) 2022/1903 of 6 October 2022 and Council Decision (CFSP) 2022/1909 of 6 October 2022, published in the Official Journal of the EU L259 of 6 October 2022.

- A new category of subjects to asset-freezing sanctions: the persons, entities or bodies facilitating infringements of the prohibition against the circumvention of sanctions against Russia.²⁸

The **ninth package** of sanctions was adopted on 16 December 2022 and includes, for example:

- A prohibition of investments into legal persons, bodies or entities incorporated or constituted in Russia or other third countries if operating in Russia, in the mining and quarrying sector;²⁹
- An extension of the list of export-restricted items in what concerns certain drones, chemical/biological equipment, riot control agents and electronic components;³⁰
- The Russian Regional Development Bank was added to the list of Russian State-owned or controlled entities that are subject to the transaction ban.³¹

The **tenth package** of sanctions was adopted on 25 February 2023 and includes, for example:

- A prohibition of transit via the territory of Russia of the dual-use goods and technology banned from export into Russia;³²
- A prohibition to provide gas storage capacity to Russian nationals and residents or to legal persons, entities or bodies established in Russia, as well as to persons owners of such entities;³³

²⁸ Council Regulation (EU) 2022/1905 of 6 October 2022 and Council Decision (CFSP) 2022/1907 of 6 October 2022, published in the Official Journal of the EU L259 of 6 October 2022.

²⁹ Council Regulation (EU) 2022/2474 of 16 December 2022 and Council Decision (CFSP) 2022/2478 of 16 December 2022, published in the Official Journal of the EU L322 of 16 December 2022.

³⁰ Council Regulation (EU) 2022/2478 of 16 December 2022, published in the Official Journal of the EU L322 of 16 December 2022.

³¹ Council Decision (CFSP) 2022/2478 of 16 December 2022, published in the Official Journal of the EU L322 of 16 December 2022.

³² Council Regulation (EU) 2023/426 of 25 February 2023 and Council Decision (CFSP) 2023/434 of 25 February 2023, published in the Official Journal of the EU L59 of 25 February 2023.

³³ Council Regulation (EU) 2023/426 of 25 February 2023 and Council Decision (CFSP) 2023/434 of 25 February 2023, published in the Official Journal of the EU L59 of 25 February 2023.

- A prohibition to allow Russian nationals or natural persons residing in Russia to hold any posts in the governing bodies of the owners or operators of critical infrastructures or entities;³⁴

The **eleventh package** of sanctions was adopted on 23 June 2023 and includes, for example:

- A possibility to take exceptional, last-resort measures restricting the sale, supply, transfer or export of certain goods and technologies, whether or not originating in the EU, to any natural or legal person, entity or body in Russia;³⁵
- A ban on using trailers or semi-trailers registered in Russia in order to transport of goods within the territory of the Union by road transport undertakings, regardless whether the trailers or semi-trailers are hauled by trucks registered in other countries;³⁶
- A prohibition of accessing ports and locks in the territory of the Union by vessels engaged in ship-to-ship transfers where the competent authorities have reasonable cause to suspect that a vessel is in breach of the ban on importing seaborne Russian crude oil and petroleum products into the Union.³⁷

II Future plans at the EU level to prevent the circumvention of international sanctions

In addition to the sanction packages, the European Commission issued in December 2022 a Proposal for a Directive with a view to harmonise the rules concerning criminal offences and penalties for the violation of EU restrictive measures, across the EU Member States.³⁸ A revised

³⁴ Council Regulation (EU) 2023/426 of 25 February 2023 and Council Decision (CFSP) 2023/434 of 25 February 2023, published in the Official Journal of the EU L59 of 25 February 2023.

³⁵ Council Regulation (EU) 2023/1214 of 23 June 2023 and Council Decision (CFSP) 2023/1217 of 23 June 2023, published in the Official Journal of the EU L59 of 23 June 2023.

³⁶ Council Regulation (EU) 2023/1214 of 23 June 2023 and Council Decision (CFSP) 2023/1217 of 23 June 2023, published in the Official Journal of the EU L59 of 23 June 2023.

³⁷ Council Regulation (EU) 2023/1214 of 23 June 2023 and Council Decision (CFSP) 2023/1217 of 23 June 2023, published in the Official Journal of the EU L59 of 23 June 2023.

³⁸ The Proposal for a Directive on the definition of criminal offences and penalties for the violation of Union restrictive measures, COM(2022) 684.

version has been published on 17 May 2023, after a review of the Council (the “**Directive Proposal**”).³⁹

The Explanatory Memorandum to the Directive Proposal highlights the following reasons for putting forth the proposal:

A. The inconsistent enforcement of Union restrictive measures

The Commission cited the urgency of “*speaking with one voice in the current context of Russia’s military aggression against Ukraine*”, in an area where the implementation and enforcement of restrictive measures adopted by the EU is largely in the responsibility of Member States.

B. The differences among Member States’ criminal definitions and penalties

The approaches of the different Member States on the penalties for violating EU sanctions are greatly divergent, with 12 Member States criminalising the violation of EU restrictive measures, in other 13 the violation being either a criminal offence or an administrative one, while in two states the violation amounting only to an administrative offence.

The Commission also highlights the wide range of penalties across the Member States, with the maximum length of imprisonment varying from 2 to 12 years, and the maximum fine varying from 1,200 EUR to 5,000,000 EUR.

C. The lack of criminal investigations and prosecutions

The Commission notes the low rate at which authorities of Member States hold accountable the persons who violate EU sanctions, even with increased support received from Europol and Eurojust.

There has notably been a wider discussion on whether the competent European bodies may undertake increased responsibility in investigating and prosecuting the

³⁹ <https://www.consilium.europa.eu/en/press/press-releases/2023/06/09/eu-sanctions-council-finalises-position-on-law-that-aligns-penalties-for-violations/> (last accessed on 15.05.2023).

circumvention of EU sanctions, with the Chief Prosecutor of the European Public Prosecutor's Office expressing an eagerness to act if so required.⁴⁰

D. Negative consequences of the *status quo*

According to the Commission, maintaining the *status quo* would “weaken the enforcement of the Union restrictive measures and undermine the credibility of the EU's objectives”.

In practical terms, the text of the Directive Proposal provides the following:

- A mandate for Member States to ensure that the violation of EU restrictive measures (or of national provisions implementing EU restrictive measures) constitutes a criminal offence when committed intentionally, provided it falls under one of the categories defined therein;
- A list of scenarios which shall be regarded by the Member States as violations of EU restrictive measures, for example (just to name a few):
 - making funds or economic resources available to, or for the benefit of, a designated person, entity or body in violation of a prohibition imposed by a Union restrictive measure;
 - failing to freeze funds or economic resources belonging to or owned, held or controlled by a designated person, entity or body in violation of an obligation set out in a Union restrictive measure;
 - trading, importing, exporting, selling, purchasing, transferring, transiting or transporting goods, as well as providing brokering services, technical assistance or other services relating to those goods, in violation of a prohibition imposed by a Union restrictive measure.
- Legal professionals shall not have a duty to report information that they receive from, or obtain on, one of their clients, in the course of ascertaining the legal position of their client, or performing the task of defending or representing that client in, or concerning, judicial proceedings, including providing legal advice or instituting or avoiding such proceedings;

⁴⁰ <https://www.euractiv.com/section/justice-home-affairs/news/europes-top-prosecutor-sets-sights-on-russia-sanctions-busters/> (last accessed on 15.05.2023).

- The criminal penalties for natural persons are in a range of up to 1-5 years of imprisonment, depending on the severity of the offences, if they involve funds or economic resources of at least 100,000 EUR. The penalties may also comprise additional criminal or non-criminal sanctions or measures, which may include fines;
- The criminal penalties for legal persons include the exclusion from accessing certain funding/benefits, disqualification from the practice of business activities, the withdrawal of permits and authorisations to pursue activities which have resulted in committing the offence, placing under judicial supervision, judicial winding-up, or the closure of establishments, which have been used for committing the criminal offence.
- In addition, legal persons held accountable for certain offences shall be liable for fines of up to 1-5% of the total worldwide turnover of the legal person either in the business year preceding the one in which the offence was committed, or in the business year preceding the fining decision. Alternatively, the legal persons shall be fined an amount of either 8 million Euro, or 40 million Euro, depending on the offences committed;
- The transposition term shall be 12 months from the entry into force of the Directive, which shall take place on the 20th day following that of its publication in the Official Journal of the EU.

At this stage of the legislative process, the Directive Proposal is awaiting the Parliament's position in the 1st reading,⁴¹ after the Committee on Civil Liberties, Justice and Home Affairs has released a report thereon on 7 July 2023.⁴²

III The Romanian Legal Framework for Implementing the Sanctions

The legal framework for the application of sanctions in Romania is underpinned by the Government Emergency Ordinance No. 202/2008 *on the application of international sanctions* (the

⁴¹ [https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2022/0398\(OLP\)](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2022/0398(OLP)) (last accessed on 15.05.2023).

⁴² https://www.europarl.europa.eu/doceo/document/A-9-2023-0235_EN.html (last accessed on 24.07.2023).

“**GEO No. 202/2008**”). The scope of the GEO No. 202/2008, as provided under Art. 1 thereof, is to regulate the method of applying, at a national level:

- a) the international sanctions of a mandatory nature, as instated by (i) the resolutions of the UN Security Council or other instruments adopted under Art. 41 of the UN Charter and (ii) regulations, decisions, common positions, common actions and other legal instruments of the EU; and
- b) the international sanctions which are not mandatory for Romania.

Notably, GEO No. 202/2008 further provides the following rules with respect to the application of sanctions in Romania:

- the instruments issued by the UN and the EU on international sanctions are mandatory for all public authorities and institutions in Romania, as well as for Romanian natural or legal persons or those situated on the territory of Romania;
- if required for the implementation of mandatory sanctions adopted through directly effective instruments (such as EU Regulations and Decisions), the domestic instruments necessary for the application of the sanctions, as well as for the purpose of incriminating the failure to observe the sanctions, if the case, shall be adopted;
- the Romanian public authorities and institutions have the obligation to take the necessary measures to ensure the implementation of the mandatory international sanctions, in their respective area of competence. For example:
 - the National Agency for Tax Administration (ANAF) is the relevant authority in charge of sanctions pertaining to the freezing of funds or economic resources;
 - the National Office for Prevention and Control of Money Laundering is the relevant authority in charge of sanctions pertaining to restricting certain transfers of funds and financial services having as purpose the prevention of nuclear proliferation.
- the asset freezing measures are imposed through an Order issued by the President of ANAF, which is communicated without delay to the persons in question and is published in the Official Gazette of Romania within 3 days from the issuing date. The orders may be challenged according to the administrative disputes procedure provided by Law no. 554/2004. Moreover, when maintaining the measure is no longer justified, ANAF must revoke it either upon request or *ex officio*.

- Pursuant to the latest amendment of GEO no. 202/2008 dated June 2022, the legal persons whose funds or economic resources were frozen may request to be placed under a supervision system whereby they may still use the funds with the observance of international sanctions, provided the asset-freezing measure has a significant economic impact on the company. According to the preamble of GEO no. 79/2022 amending GEO no. 202/2008, one of the reasons for adopting the act was that “the application of restrictive measures adopted by the European Union involves the blocking of funds and economic resources, including those controlled by designated persons and entities, in this situation there being also legal entities from Romania whose economic activity has been blocked, generating difficulties in the supply of raw materials and materials, and affecting the markets for products and services”;
- there is an identification and reporting obligation incumbent on all natural or legal persons that have the obligation to report suspicious transactions according to money laundering / terrorism financing regulations, to apply KYC measures in order to establish if the clientele includes sanctioned persons/entities or if its operations otherwise involve goods related to the sanctioned persons/entities;
- there is also a reporting obligation incumbent on any person holding data and information regarding the sanctioned persons/entities, their goods, or the transactions connected to the sanctioned persons/entities or their goods;
- GEO No. 202/2008 also provides that the consequences for not observing the international sanctions directly applicable in Romania, by both natural or legal persons, consist of a contraventional fine between 10,000 and 30,000 RON and the seizure of the associated goods. Not observing the international sanctions is not, in itself, a criminal violation. However, if the act whereby the international sanctions were breached constituted a criminal act, the relevant criminal sanctions shall apply. In addition to the contraventional fine, one of more complementary measures may be applied, such as (i) the suspension of the operating permit/license or the suspension of the activity of the legal person, for a duration between one and six months, or (ii) the withdrawal of the license/permit for certain operations or activities, for a duration between one and six months or permanently.

In addition to GEO No. 202/2008, the implementation of sanctions in Romania is done through various instruments such as:

- The Government Decision No. 1541/2009 approving the Regulation for the organising and functioning of the Interinstitutional Council established for ensuring the general cooperation framework in the field of applying international sanctions in Romania;
- The Norms on the supervision by the National Office for the Prevention and Combating of Money Laundering of the means of applying the international sanctions, approved by Government Decision no. 603/2011;
- Regulation No. 28/2009 of the National Bank of Romania on overseeing the enforcement of international sanctions imposing the freezing of funds;
- Order No. 340/2010 of the National Bank of Romania establishing the reporting template for frozen funds and economic resources;
- Order No. 1984/2019 of the National Agency for Tax Administration on approving the Procedure regarding the method of fulfilling the powers of the National Agency for Tax Administration in the field of international sanctions;
- Order No. 594/2009 of the Ministry of Transport and Infrastructure on approving the Procedure regarding the overseeing of the domestic implementation of international sanctions mandatory for Romania, in the field of activity of the Ministry of Transport and Infrastructure.

On 7 April 2022 the Prime Minister of Romania issued the Decision no. 269/2022 on establishing the Inter-ministerial Committee for applying international sanctions.⁴³ According to the Decision, the Committee's objective is to identify solutions for the compliance and harmonization of decisions necessary for the effective implementation of international sanctions imposed by the UN and the EU. However, there have not been any newsworthy reports yet regarding the activity of the Committee.

Romania has so far not enacted normative instruments specifically regulating the implementation of the sanctions imposed on Russia. Nevertheless, Romania has since adopted several state aid measures and credit facilities to the benefit of persons most impacted by the Ukraine conflict.⁴⁴

⁴³ Published in the Official Gazette no. 345 of 7 April 2022.

⁴⁴ For example: Decision no. 89/2023 for the approval of the Norm "N3.14 EximBank Financing within the state aid scheme Ukraine"; Government Emergency Ordinance no. 90/2022 on granting certain credit facilities for credits granted by banks and non-banking financial institutions to certain categories of debtors; the Order 47/2023 938/184/388/47 for the amendment of

IV Steps Taken by the Romanian Authorities to Implement the Sanctions

Romania does not keep its own list of sanctioned persons on its territory. The relevant public institutions make reference to the sanctions imposed by the EU and the UN as being directly applicable in Romania. Moreover, at present there are no independent guidelines prepared by Romanian institutions for interpreting the international sanctions applicable in Romania.

Against the backdrop of the sanctions imposed at the EU level, and within the existing framework of the Romanian legislation, the Romanian authorities have started implementing certain measures at a national level. For example, with respect to the economic sanctions, the following steps were taken to this end:

- On 5 March 2022 it was reported that representatives of ANAF, the competent authority in charge of applying the mandatory economic sanctions, have confirmed that the agency was in the process of conducting investigations concerning the Russian businesspersons and companies targeted by the sanctions instated at the EU level.⁴⁵
- A preliminary result of such investigations has been announced on 7 March 2022 by the Romanian Prime Minister, in the sense that three entities and two natural persons had been identified as financing the Russian government, and thus subjected to asset-freezing sanctions.⁴⁶
- In the implementation of the asset-freezing sanctions adopted at the EU level, the President of ANAF has taken measures for the freezing of the funds and/or the economic resources as follows:
 - ordered the freezing of the funds held by Aeroflot within certain bank accounts in Romania (Order No. 420/16.03.2022);⁴⁷
 - ordered the freezing of the funds and economic resources under Romanian jurisdiction which are held by three companies allegedly controlled by TMK Steel

the Order of the Minister of finances, the Minister of development, public works and administration, of the Minister of entrepreneurship and tourism and of the Minister of agriculture and rural development no. 2.167/2.474/1.535/280/2022.

⁴⁵ <https://observatornews.ro/eveniment/fiscul-a-inceput-verificarea-comaniilor-rusesti-cum-ar-putea-ramane-mii-de-romani-fara-locuri-de-munca-461579.html> (last accessed on 18 April 2022).

⁴⁶ <https://stirileprotv.ro/stiri/actualitate/ciuda-trei-comanii-si-doua-persoane-fizice-din-rusia-identificate-in-romania-care-finantau-moscova-supuse-sanctiunilor-ue.html> (last accessed on 18 April 2022).

⁴⁷ https://static.anaf.ro/static/10/Anaf/sanctiuni_internationale/Ordin420_Aeroflot_17032022.pdf (last accessed on 18 April 2022). The Order was published in the Official Gazette no. 262 of 17 March 2022.

Holding Limited (CY), i.e. TMK Artrom SA, TMK Assets SRL and TMK Europe GmbH. (Orders nos. 466/24.03.2022, 467/24.03.2022 and 468/24.03.2022).⁴⁸ The funds and economic resources held by TKM Artrom SA and TMK Assets SRL have since been unfrozen pursuant to the companies being placed under a supervision system upon request (Orders nos. 1181/29.06.2022 and 1541/23.08.2022);⁴⁹

- ordered the freezing of a certain letter of credit issued by EximBank SA to the benefit of Metalinvest Trading AG (Order no. 495/30.03.2022);⁵⁰
- ordered the freezing of certain letters of credit issued by EximBank SA to the benefit of MMK Metalurji Sanayi Ticaret ve Liman Isletmeciligi A.S. (Order no. 496/30.03.2022 and no. 727/13.04.2022).⁵¹

- Certain entities targeted by asset freezing sanctions in Romania have challenged in court the Order of the President of ANAF implementing such measures.⁵² However, the Romanian courts dismissed the challenges as ungrounded, noting *inter alia* that the challenged orders were sufficiently reasoned. In the courts' view, the mere fact that the orders only briefly presented the factual and legal situation did not mean that they were not reasoned as the orders were based on a Report prepared by the fiscal authorities which contained details regarding the investigations conducted and the applicable legal norms,⁵³ Also the courts held that the claimant did not prove that the shareholder placed on the list of sanctioned individuals according to Regulation No. 269/2014 had successfully transferred its shares in the targeted company.⁵⁴

⁴⁸ The three orders were published in the Official Gazette no. 287 of 25 March 2022.

⁴⁹ https://static.anaf.ro/static/10/Anaf/sanctiuni_internationale/ordin_blocare01072022.pdf and https://static.anaf.ro/static/10/Anaf/sanctiuni_internationale/OPANAF_1541_2022_TMK_ASSETS.pdf (last accessed on 15.05.2023).

⁵⁰ https://static.anaf.ro/static/10/Anaf/sanctiuni_internationale/OpANAF_495_31032022.pdf (last accessed on 18 April 2022). The Order was published in the Official Gazette no. 318 of 31 March 2022.

⁵¹ https://static.anaf.ro/static/10/Anaf/sanctiuni_internationale/OpANAF_496_31032022.pdf (last accessed on 18 April 2022); https://static.anaf.ro/static/10/Anaf/sanctiuni_internationale/ordin_727_13042022.pdf (last accessed on 18 April 2022). Order no. 496 was published in the Official Gazette no. 318 of 31 March 2022 and Order no. 727 was published in the Official Gazette no. 370 of 13 April 2022.

⁵² <https://www.zf.ro/eveniment/tmk-artrom-dat-judecata-anaf-presedintele-anaf-blocarea-conturilor-20713704> (last accessed on 18 April 2022).

⁵³ Decision no. 193 of 7 July 2022 rendered by the Craiova Court of Appeal; Decision no. 2050 of 7 November 2022 rendered by the Bucharest Court of Appeal.

⁵⁴ Decision no. 2050 of 7 November 2022 rendered by the Bucharest Court of Appeal. The decision has been challenged by way of a final appeal, for which the first court hearing has been set for 4 April 2024.

- During a press conference held in November 2022, the President of ANAF revealed that the institutions investigated over 2,400 natural and legal persons in the context of international sanctions after the start of the armed conflict in Ukraine, which led to freezing 10 Mil. EUR in assets and seizing another 13.1 Mil. RON. Moreover, it is reported that the persons who did not observe the restrictive measures were fined with an aggregate of 280,000 RON. The President of ANAF also stated that it had granted 9 derogations from the sanctions, in order not to obstruct the activity of the targeted legal persons to such an extent that it would risk the closure of the activity.⁵⁵
- Several fines applied by ANAF for the breach of Romanian operators of the EU sanctions regime against Russia have been covered in the recent media, in the context of the operators challenging the fines before the Romanian courts.⁵⁶

V The standard of diligence for complying with the obligations imposed by the EU sanctions regime

The European Commission has published an FAQ on the topic of Circumvention and Due Diligence in connection to the restrictive measures applied at the EU level, including sanctions applied against Russia.⁵⁷ The FAQ, which has been updated up to 18 July 2023, clarifies that:

- EU operators have to perform appropriate due diligence calibrated according to the specificities of their business and the related risk exposure, however there is no one-size-fits-all model. It is for each operator to develop, implement, and routinely update an EU sanctions compliance programme that reflects their individual business models, geographic areas of operations and specificities and related risk-assessment regarding customers and staff;

⁵⁵ <https://economedia.ro/anaf-a-blocat-pestre-10-milioane-de-euro-si-a-confiscat-13-milioane-de-lei-in-contextul-sanctiunilor-internationale-dupa-inceperea-razboiului-dus-de-rusia-in-ucraina.html#.ZGNANXZByUk> (last accessed on 16.05.2023).

⁵⁶ <https://www.profit.ro/povesti-cu-profit/auto-transporturi/foto-sanctiuni-anti-kremlin-in-romania-un-nou-esec-al-anaf-acum-legat-de-cel-mai-bogat-rus-20991713> (last accessed on 16.05.2023); <https://www.profit.ro/stiri/politic/exclusiv-foto-gigant-romania-importat-minereu-fier-trader-cel-mare-actionar-indirect-oligarh-rus-apropiat-putin-intrebarea-milioane-transata-instanta-dupa-inainte-fie-sanctionat-20893857> (last accessed on 16.05.2023).

⁵⁷ "Circumvention and Due Diligence" Frequently Asked Questions – as of 18 July 2023 – https://finance.ec.europa.eu/system/files/2023-07/faqs-sanctions-russia-consolidated_en_1.pdf (last accessed on 16.05.2023).

- Due diligence may in particular consist in screening of beneficiaries of funds or economic resources against sanctions lists and adverse media investigations, such as searches on the internet and news to find evidence that a contractual counterpart, even if not designated (so it passes the screening against the sanctions list), is actually controlled by a designated person;
- If a certain structure was created in order to assist a person to evade the effects of its possible future listing, then current, ongoing participation in that structure can amount to circumvention of the restrictive measures, if done knowingly and intentionally. The mere participation in a structure created for that purpose can be considered as a breach;
- Regarding the circumvention of sanctions against Russia, Regulation 833/2014 prohibits to, knowingly and intentionally, participate in activities the object or effect of which is to circumvent prohibitions in the Regulation. Thus, the threshold is acting with knowledge and intent to circumvent a prohibition included in the Regulation.

At a national level, on the one hand, the Romanian authorities have not yet published a set of guidelines/instructions regarding the due diligence required for complying with international sanctions. On the other hand, the case law has already started to crystallize in what concerns the possible criteria and standards of diligence applicable to Romanian operators when complying with their obligations to avoid certain dealings with persons placed under the EU sanctions regime.

For example, a recent court case had as subject matter a challenge by a Romanian operator, which ordered a transport of goods from a seller located in the Republic of Moldova, to a fine applied by ANAF for the reason that the seller's ultimate beneficiary was a Russian individual sanctioned by the EU. In its challenge, the operator argued that it could not know and did not have reasons to suspect that there was a connection between the Moldovan seller and the sanctioned individual.

The court of first instance held that:⁵⁸

- Professionals are held to a minimal standard of diligence of knowing their commercial partners, and have the obligation to refrain from violating the applicable sanctions regime

⁵⁸ Decision no. 15 of 4 January 2023, rendered by the Răducăneni Court of First Instance.

if they have suspicions. The criteria for determining whether the diligence standard was met include the date and nature of the commercial relations, the relevance of the sector of the entity not belonging on a list to the one of the sanctioned entity, the characteristics of the funds transferred and their practical and potential use by the sanctioned entity;

- ANAF did not sufficiently prove the possible connection between the seller and the companies owned by the sanctioned individual, and did not show the actual means in which the Romanian operator could obtain the necessary information to comply with its legal obligations. The court pointed out that the Romanian state has the obligation to bring to the attention of interested persons any available information regarding the commercial connections of the persons listed on sanctions lists, in order to facilitate the compliance with the legal obligations;
- Considering that the Moldovan seller was not placed on a list of sanctions, and in lack of any easily available information concerning its possible connections with a sanctioned party, the court found that the Romanian operator did not have a reason to suspect that by performing the transaction it would provide funds to a sanctioned party;
- The court granted the challenge and annulled the fine in the amount of 30,000 RON and the seizure measure for the amount of 41,656.31 RON.

However, the above decision of the court of first instance was successfully appealed by ANAF before the Iasi District Court. In granting the appeal, the Iasi District Court held, through a final decision, that:

- The claimant could have learned that the Moldovan seller was owned by a company ultimately owned by a sanctioned person by accessing the website of the seller, which contained information about all the firms belonging the group;
- Information regarding business partners may be obtained by accessing the Dow Jones Risk Compliance anti-corruption database;⁵⁹
- The websites of different Romanian institutions (such as ANAF, the Ministry of External Affairs or the Ministry of Transportation) contain information regarding the persons, entities or assets which are subject to international sanctions, as well as the applicable legislation.

⁵⁹ We note that access to the Dow Jones Risk Compliance database is not free of charge.

From the decision of the Iasi District Court, it may be inferred that the court did not find that the Romanian institutions have a burden to make available to the general public the commercial connections of the persons listed on sanctions lists. Conversely, the court considered that the relevant information regarding the persons, entities and assets which form the subject matter of international sanctions, as well as the mandatory legislation, may be found on the websites of different institutions and bodies (such as ANAF or the Ministry of External Affairs).⁶⁰ The onus falls on the private operator to conduct an appropriate due diligence of its commercial partners.

Furthermore, according to another decision of the Romanian courts (which has not yet become final), there is no violation of the sanctions regime where an operator bought goods from a person subject to EU sanctions, if the transfer of the right to property to the acquired goods had already taken place before the sanctions were applied. In such a case, the payment of the price to the sanctioned party and the fulfilment of the shipping formalities in order to take possession of the goods do not constitute violations on behalf of the buyer.⁶¹

VI Current Status

While the EU continues to expand upon the sanctions imposed against Russia, the focus of the institutions appears to have started to shift towards the prevention of the circumvention of the sanctions already in force. An increased emphasis on enforcement of penalties at the level of the individual Member States is also expected, in cooperation with EU bodies.

In Romania, the competent authorities have taken some measures to implement the EU sanctions at a national level. However, the pace at which the actions were taken, as well as the political discourse, seem to have notably decreased in the last months.

Instead, the case law surrounding the challenges to the enforcement action taken by ANAF, albeit limited, seems to be split, with lower courts placing a higher burden on the national institutions

⁶⁰ We note that the websites of such institutions mainly link to the regulatory framework of the sanctions' regime, and do not provide information concerning the affiliates of the persons subject to sanctions.

⁶¹ Decision no. 6088 of 15 September 2022 rendered by the Galați Court of First Instance. The decision was appealed by ANAF before the Galați District Court, and the first court hearing was set for 8 December 2023.

to provide the means of private operators for complying with their legal obligations arising from the sanctions regime, while higher courts tend to consider that the information provided on the websites of national institutions is sufficient.

It remains to be seen how the case law will further develop as the circumvention of sanctions becomes increasingly penalised, as well as whether the legislators will provide additional guidance on the standards of diligence incumbent on private parties in the context of EU sanctions.

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