

Guidelines

Relating to the implementation of financial restrictive measures (sanctions)¹ against third countries², entities or individuals

¹ In this guide, the term "sanctions" is used interchangeably with the term "restrictive measures". For the purposes of this guide, these terms shall have the same meaning.

² Non-EU countries.

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General comments:

- The recommendations issued in this guide are to be considered non-exhaustive and of a general nature for the purpose of implementing financial sanctions.
- The recommendations set out in this guide are not legally binding and should not be read as recommending any action which would be incompatible with applicable European or national laws. The guide is not intended to replace the obligation of the operators to consult applicable law. Only the latter is legally binding.
- It therefore follows that the guide shall not substitute applicable law or the handling of individual requests.
- The Ministry of Finance is responsible for keeping the guide up-to-date and invites users to send their suggestions by email to the following address: sanctions@fi.etat.lu
- Users are also invited to communicate by email any difficulties they encounter in the implementation of a financial sanctions regime.
- The guide is available for download from the Ministry of Finance's website, under the International Financial Sanctions section.
http://www.mf.public.lu/publications/sanctions_financieres_int/index.html
- This guide does not specifically address financial restrictive measures imposed within the framework of combating terrorism financing. In respect of such measures, users are asked to refer to the Ministry of Finance's guide entitled "Guidelines relating to the implementation of financial sanctions against certain persons, entities, bodies and groups within the framework of combating terrorism financing", which is also available for download from the Ministry of Finance's website, under the International Financial Sanctions section.
http://www.mf.public.lu/publications/sanctions_financieres_int/index.html

1. Types of financial restrictive measures

Luxembourg differentiates between two financial restrictive measures regimes applicable in Luxembourg:

Restrictive measures at United Nations level: These relate to restrictive measures put in place by United Nations Security Council Resolutions ("UNSC Resolutions"), which countries are required to transpose into their national legislation and implement. With respect to policy areas that fall within the competence of the European Union, the transposition of the UNSC resolutions by the European Union may remove the need for their national transposition.

Restrictive measures at European level: These are one of the EU's tools to promote the objectives of the Common Foreign and Security Policy (CFSP) and are adopted by an EU CFSP decision. Where such decisions have an impact on policy areas that fall within the competence of the European Union, they are implemented by an EU Council or Commission Regulation. Unlike decisions, which do not provide for direct obligations to be imposed on stakeholders, EU regulations are directly applicable to Luxembourg and do not require national transposition. They generally enter into force on the day following their publication in the Official Journal of the European Union.³

2. List of the main competent authorities in matters relating to financial sanctions in Luxembourg.

2.1. The Ministry of Foreign and European Affairs and in particular the **Directorate for International Economic Relations and European Affairs** are responsible for the **overall coordination of the economic and financial restrictive measures** taken by the United Nations Security Council and/or the European. They work together with other national authorities responsible for the implementation of restrictive measures.

⇒ **Contact details:** Directorate for International Economic Relations and European Affairs
6, rue de l'Ancien Athénée
L-1144 Luxembourg
Tel.: (+352) 2478 2313
Fax: (+352) 22 20 48

2.2. The Ministry of Finance is the competent authority for all matters relating to the financial aspects of international sanctions. Such competence includes in particular (a) dealing with any questions regarding the implementation of financial restrictive measures from the persons, entities and groups targeted, as well as from natural and legal persons called upon to apply them; (b) any disputes relating to (a); (c) dealing with any questions and disputes regarding homonyms⁴; (d) dealing with any questions and disputes regarding unintended consequences of the financial restrictive measures on assets; and (e) exceptionally granting authorisations exempting from the imposed prohibitions and restrictive measures.

⇒ **Contact details: Ministry of Finance**
Directorate for Multilateral Affairs, Development and Compliance

³ http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/FR/foraff/135805.pdf

⁴ As regards the matter of homonyms, please refer to the "Lists – Databases" section

3, rue de la Congrégation
 L-2931 Luxembourg
 Tel.: (+352) 247 82656
 Fax: (+352) 46 62 12
 Email: sanctions@fi.etat.lu

⇒ **Who can apply to the Ministry of Finance?**

- (i) Any natural or legal persons of Luxembourg nationality or residing in Luxembourg and their lawyers⁵;
- (ii) All natural or legal persons of foreign nationality or who do not reside in Luxembourg but whose assets have been frozen in Luxembourg, and their lawyers.⁶

2.3. The *Commission de Surveillance du Secteur Financier* – (“CSSF”) is responsible for the prudential supervision of professionals of the financial sector falling under the scope of its competences. On the basis of Article 33 of CSSF Regulation no. 12-02, professionals are required to keep the CSSF informed when persons, entities or groups involved in a transaction or business relationship subject to prohibitions or restrictive measures in financial matters are identified. The "Financial crime" section of CSSF's website contains useful information on this matter.

⇒ **Contact details: *Commission de Surveillance du Secteur Financier.***

283, route d’Arlon
 L-1150 Luxembourg
 Tel.: (+352) 26 25 1 – 1
 Fax: (+352) 26 25 1 – 2601
 Email: direction@cssf.lu
 Website: www.cssf.lu

2.4. The *Commissariat aux Assurances* ("CAA") is responsible for the prudential supervision of professionals of the insurance sector falling under the scope of its competences. On the basis of Article 31 of CAA Regulation no. 13/01, professionals are required to inform the CAA where persons, entities or groups involved in a transaction or business relationship subject to prohibitions or restrictive measures in financial matters are identified.

⇒ **Contact details: *Commissariat aux Assurances***

7, boulevard Joseph II
 L-1840 Luxembourg
 Tel.: (+352) 22 69 11 – 1
 Fax: (+352) 22 69 10
 Email: sanctions@commassu.lu
 Website: www.caa.lu

⇒ **Please note:** By way of additional information, it should be noted that although it is not a competent authority for cases relating to financial sanctions, the *Office des licences* in the Ministry of the Economy is the competent authority controlling the export, transfer, transit and import of goods of a strictly civil nature, defence-related products and dual use goods; brokering and

⁵ The Ministry of Finance may request a copy of the mandate.

⁶ Idem.

technical assistance⁷; intangible transfers of technology of these items and the implementation of restrictive measures on commercial matters relating to these goods, laid down by the European Union against certain states, political regimes, persons, entities and groups.

⇒ **Contact details: Ministry of the Economy – *Office des licences***

19-21, boulevard Royal

L-2449 Luxembourg

Tel.: (+352) – 22 61 62

Fax: (+352) 460448

Email: office.licences@eco.etat.lu

3. Obligation to cooperate with the authorities⁸

All persons, entities, groups and bodies to whom the financial restrictive measures apply are obliged to cooperate with the national authorities responsible for implementing these measures. They should provide the national authorities with any information, which may be relevant such as, among other things, details pertaining to any accounts frozen, data on the identity of designated persons, details of incoming transfers resulting in the crediting of a frozen account, attempts to circumvent existing financial sanctions and cases of homonyms.

The national authorities may use the information they receive only for the purposes for which it was provided, namely ensuring the effective implementation of the restrictive measures. Such implementation also involves sustained cooperation with international and transnational authorities such as the European Commission, the Council of the European Union, the EEAS⁹, the relevant United Nations sanctions committees, the competent authorities of other Member States and police, customs and legal authorities.¹⁰

4. The value and binding nature of the various legal acts imposing financial sanctions

4.1. UNSC resolutions – CFSP Decisions

UNSC Resolutions or CFSP Decisions are binding standards only for Member States.

⇒ ***Please note:*** Although these standards are not enforceable against natural or legal persons, the latter may not disregard them. It follows that natural or legal persons may not plead good faith on the grounds that the UNSC Resolutions or CFSP decisions are to be disregarded simply because they are not directly applicable to them. It is strongly recommended to contact the Ministry of

⁷ **Technical assistance** ⇒ Any technical support related to repairs, development, manufacture, assembly, testing, maintenance, or any other technical service, and may take forms such as instruction, advice, training, transmission of working knowledge or skills or consulting services. Technical assistance includes verbal forms of assistance. Also see the "Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy", Section III (Standard wording for legal instruments), paragraph 59.

⁸ See also section on "The obligation to freeze, without delay, funds and economic resources".

⁹ The European External Action Service, <http://www.eeas.europa.eu/>

¹⁰ See "Restrictive Measures (sanctions): Update of the EU Best Practices for the Effective Implementation of Restrictive Measures", Section B (Restrictive Financial Measures) – IV (Role of economic operators and citizens), paragraph 41; V (Use of information by competent authorities), paragraphs 42 and 43.

Finance in case where a UNSC Resolution or a CFSP Decision has not (yet) been transposed into national law.

Operators may consult the UNSC Resolutions on the following website: <http://www.un.org/fr/sc/documents/resolutions/>

CFSP Decisions are available on the following websites: <https://eur-lex.europa.eu> and http://eeas.europa.eu/cfsp/sanctions/docs/measures_en.pdf

4.2. EU Regulations

An EU Regulation is a rule that is binding on citizens of the EU and/or natural or legal persons residing, having their registered office in the EU or operating in or from EU territory. An EU Regulation is binding in its entirety and directly applicable in all Member States without intervention by the national authorities.

The relevant EU Regulations may be consulted on the following websites:

<http://eur-lex.europa.eu/>¹¹ and http://eeas.europa.eu/cfsp/sanctions/docs/measures_en.pdf

4.3. Laws/Grand-Ducal regulations

A Law or Grand-Ducal Regulation, issued to implement a law becomes, effective following its publication in the Official Gazette.¹² They are applicable to citizens of Luxembourg, both natural and legal persons, and any other natural or legal person operating in or from Luxembourg.

The Laws and Grand-Ducal Regulations can be consulted on the following website:

<http://www.legilux.public.lu/leg/index.html>

Operators may consult the CSSF's website:

<http://www.cssf.lu/documentation/regulations/financial-crime/>

4.4. No retroactivity

EU Regulations, Laws and Grand-Ducal Regulations have no retroactive effect.

5. The territoriality clause of EU Regulations

EU Regulations should apply only in situations where links exist with the EU. The European Union will refrain from adopting legislative instruments that, having extra-territorial application, would be in breach of international law. In general, EU regulations shall apply:¹³

- Within the territory of the European Union, including its airspace¹⁴.

¹¹ See also Section 14. Lists – Databases for consolidated lists of financial sanctions targets.

¹² The law or regulation will enter into force four full days after its publication, unless it states a longer or shorter deadline.

¹³ Also see the "Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy", Section II-J (Jurisdiction), paragraphs 51 and 52.

¹⁴ **Territory of the Union** ⇒ The Territory of the Union means the territories of the Member States to which the Treaty on European Union and the Treaty on the Functioning of the European Union is applicable, under the conditions laid down in the treaties, including the airspace of the Member States. Territories that are expressly excluded by the Member States are outside the territory of the Union and are listed in the corresponding annex of the abovementioned treaties. As a result these territories do not have to implement EU regulations.

- On board of any aircraft or any vessel under the jurisdiction of a Member State. It therefore follows that persons, entities and bodies falling within the scope of the EU Regulation and which own or control vessels or aircraft registered outside the European Union must make every effort to ensure that such vessels or aircraft comply with the EU regulations.
- To any person inside or outside the territory of the European Union who is a national of a Member State.
- To any legal person, entity or body, within or outside the European Union, which is incorporated or constituted under the law of a Member State.
- To any legal person, entity or body in respect of any business concluded in whole or in part within the European Union. It follows that any non-European legal person, entity or body established in a non-European country must apply EU Regulations in respect of any business carried out in whole or in part within the European Union. Any other interpretation would mean allowing the non-European entity to conduct a transaction in the EU that is prohibited to EU citizens.

On the other hand, entities subject to the law of a country outside the EU and established outside the EU shall not be bound by EU Regulations. That said, where the registered office of such entities is established in the EU and where such entities are acting under the direction of such registered office, the latter may be held liable.

6. Various language versions

The Court of Justice of the European Union ("CJEU") considers that the wording used in one language version of a provision of EU law cannot serve as the sole basis for the interpretation of that provision, or be made to override the other language versions in that regard.¹⁵

The interpretation of a provision of EU law must take into account the context, the objects, the purpose and the wording of the rules of which it forms part.¹⁶

7. Fight against money laundering and terrorism financing and financial sanctions

Although there are areas of convergence between the legal provisions on the fight against money laundering and terrorism financing, (AML/CFT) and the legal provisions relating to financial sanctions, it is important to bear in mind that the legislation and obligations are not identical; in fact there are significant differences.

In short, the AML/CFT legal provisions impose identification (*know your customer*), customer due diligence and risk assessment requirements on operators in order to ensure that funds originating from and/or received by their clients are not proceeds of a criminal activity or being used to finance terrorism/terrorists.

¹⁵ CJEU 5 December 1967 Van de Vecht, 19/67.

¹⁶ CJEU 21 February 1984, St. Nikolaus Brennerer, 337/82, ECR 1051, point 10, CJEU 17 October 1995, Leifer and others, C-83/94, ECR I-3231, point 22.

However, in implementing the financial sanctions' legislation, operators are required to prevent the circumvention of financial sanctions that would result in funds or economic resources being made available to a designated person, entity or body.

It should be noted that the funds in question **may** be the proceeds of an entirely legitimate activity.¹⁷

It therefore follows that IT or other systems put in place in order to detect activities that may constitute a money laundering or terrorism financing offence may not always suffice to detect breaches of financial sanctions legislation and vice versa. The legislation relating to financial sanctions may therefore impose additional obligations on operators with respect to the identification of the parties to a transaction and the monitoring of such transactions.

By the same reasoning, the verification of, by means of example, a Politically Exposed Persons (PEP) database, may not necessarily allow to detect a possible breach of financial restrictive measures.

8. Technical and IT issues

The obligation to implement sanctions shall remain in force even in the event of technical or IT issues and such issues cannot justify the breach of financial restrictive measures.

The Ministry of Finance recommends that it is notified as soon as possible of any issues that may be encountered, whether technical or IT-related, when implementing a sanctions regime so that the Ministry may assess each situation on a case-by-case basis to determine the appropriate course of action, which may include changes to procedures or to applicable legislation.

¹⁷ If, on the other hand, the funds are the proceeds of a criminal activity or if they are being used to finance terrorism/terrorists, then the operator must submit a suspicious transaction report to the Financial Intelligence Unit. This obligation is additional to the one of freezing the funds and notifying the competent authorities of such asset freeze.

9. Remedies

9.1. Non-contentious remedies – Requests for de-listing

Existing legal texts	Delisting procedure	Who to contact
EU Regulations	✓	<p>EU Council 175, rue de la Loi B-1048 Brussels – Belgium</p> <p>The European Commission B-1049 Brussels – Belgium</p> <p>The European Commission may also be contacted at the following email address: relex-sanctions@ec.europa.eu</p>
UNSC resolutions ¹⁸	✓	<p>Focal Point for De-listing¹⁹ Security Council Subsidiary Organs Branch Room DC2 2034 United Nations New York, N.Y. 10017 United States of America Tel. +1 917 367 9448 Fax. +1 212 963 1300 Email: delisting@un.org https://www.un.org/sc/suborg/en/sanctions/delisting</p> <p>*Petitioners may submit de-listing requests either through the focal point process outlined in resolution 1730 (2006), or through their State of residence or citizenship.</p> <p>*If a person is removed from the UN sanctions list, relevant amendments are made to the corresponding legal acts of the EU.</p>

¹⁸ With the exception of Resolutions 1989 (2011), 1267 (1999), 1333 (2000); in respect of these Resolutions, please refer to the "Best practices guide relating to the implementation of financial sanctions against certain persons, entities, bodies and groups within the framework of combating terrorism financing", which is also available for download from the Ministry of Finance's website, under the International Financial Sanctions section: http://www.mf.public.lu/publications/sanctions_financieres_int/index.html

¹⁹ Established pursuant to Resolution 1730 (2006) of the Security Council.

9.2. Contentious remedies

9.2.1. Against an EU Regulation:

The Court of Justice of the European Union

L – 2925 Luxembourg

Tel. switchboard: (352) 4303.1

Fax: (352) 4303.2600

http://curia.europa.eu/jcms/jcms/Jo2_7022

An application for the annulment of an act imposing financial restrictive measures is heard in the General Court of the EU. An appeal to the judgment of the General Court is heard by the Court of Justice of the European Union (CJEU).

It should be noted that the annulment of the acts imposing restrictive measures (against a person, entity, groups or bodies) does not take effect immediately after the judgment made by the General Court unless explicitly stated in the judgment. The effects of any acts that have been annulled in the first instance are maintained until expiry of the period for bringing an appeal (two months and ten days from notification of the judgment). During that period, the competent EU institution can remedy the infringements established and adopt new restrictive measures with respect to the persons, entities, groups or bodies concerned by the annulment. Alternatively, the competent institutions can appeal, in which case the restrictive measures remain in full force pending the outcome of the appeal. After the aforementioned period of two months and ten days, if the EU institution does not bring an appeal and if the infringements established by the General Court are not remedied, the restrictive measures against this person or entity will end.²⁰

9.2.2. European Union Legal Aid

In order to ensure effective access to justice, legal aid shall be granted for proceedings before the General Court of the European Union. Legal aid shall cover, in whole or in part, the costs involved in legal assistance and representation by a lawyer in proceedings before the General Court. The cashier of the General Court shall bear those costs. Any natural person who, because of their financial circumstances, is wholly or partly unable to meet the costs referred to above shall be entitled to legal aid. Their financial circumstances shall be assessed, taking into account objective factors such as income, capital and the family situation. Legal aid shall be refused if the action in respect of which the application is made appears to be manifestly inadmissible or manifestly unfounded.

An application for legal aid may be made before or after the action has been brought before the General Court. The application needs not be made through a lawyer.

²⁰ See "Restrictive measures (sanctions) – Update of the EU Best Practices for the Effective Implementation of Restrictive Measures", Section A (Designation and identification of persons and entities subject to targeted restrictive measures), III (De-listing), paragraph 22

The application for legal aid must be accompanied by all information and supporting documents making it possible to assess the applicant's financial circumstances, such as a certificate issued by the competent national authority attesting to his financial circumstances.

If the application is made before the action has been brought before the Court, the applicant must briefly state the subject matter of the proposed action, the facts of the case and the arguments in support of the action. The application must be accompanied by supporting documents to that end.

Further information is available on the following website:

http://curia.europa.eu/jcms/jcms/Jo2_10056/?hlText=aide+judiciaire

10. Applications for authorisation²¹ and other applications

10.1. Procedure:

Any inquiries relating to financial restrictive measures, including any application for authorisation in accordance with the exemptions specifically provided for under European legislation, should be sent by email to sanctions@fi.etat.lu or by post to the Ministry of Finance, Directorate for Multilateral Affairs, Development and Compliance, rue de la Congrégation, L-1352 Luxembourg. Once the application is submitted, the Ministry of Finance shall acknowledge receipt thereof to the applicant.

⇒ **Please note:** By way of additional information, with regards to authorisations issued by the *Office des Licences*, applications should be sent by post to: Office des Licences, Ministère de l'Economie, 19-21, boulevard Royal, L-2914 Luxembourg. Applications may also be sent by email to the following address: office.licences@eco.etat.lu

Further information can be found on the following website:

<http://www.guichet.public.lu/entreprises/fr/marche-international/licences/index.html>

10.2. Processing time:

The Ministry of Finance shall notify applicants of its decision as soon as possible. However, the processing time depends on the complexity of the application and the status of the case. Incomplete applications will not be processed until all required paperwork is received. Furthermore, depending on the complexity of the case, additional consultations within the relative government departments and with the European Commission Services are often necessary.

10.3. Supporting documents/forms:

With respect to all applications for authorisation and/or any notifications, users are asked to use the forms in the annex of this guide. The forms are also available for download from the Ministry of Finance's website, under the International Financial Sanctions section.

http://www.mf.public.lu/publications/sanctions_financieres_int/index.html

²¹ Certain legal provisions may provide for the requirement to submit prior notification and not the requirement to obtain prior authorisation. The procedure set out in section 11 shall also apply, mutatis mutandis, to prior notifications.

10.4. Expenses in respect of applications

The costs of processing applications for authorisation shall be borne by the Ministry of Finance, at no additional cost for the applicant.

10.5. Can a copy of the authorisation be sent to third parties?

Notwithstanding the applicable rules concerning confidentiality and professional secrecy, professionals may transfer a copy of the authorisation to third parties that have an apparent connection with the transaction. The Ministry of Finance should be consulted prior to forwarding the document to party entities that have no obvious connection with the transaction (for example, foreign government authorities). In case of any doubt, the Ministry of Finance should also be consulted.

10.6. Modification of an authorisation

Authorisations are issued on the basis of the information and documents submitted during the application process. It follows that applicants are required to a) keep the Ministry of Finance informed of any changes that are likely to alter the assessment parameters on the basis of which the authorisation was issued and (b) where necessary, submit a new application with all of the necessary and/or useful supporting documents and information. If the authorisation is issued on the basis of information that proves to be false, the authorisation shall be considered null and void. In the event of a change in circumstances on the basis of which the authorisation has been issued, the Ministry of Finance may withdraw or amend the authorisation.

10.7. Removal from the financial sanctions lists of a person and/or entity for which the authorisation has been issued.

In the event of the removal from the financial sanctions lists of a person and/or entity for which the authorisation has been issued, it shall no longer be necessary to request authorisation to perform transactions involving such person and/or entity. The authorisation shall therefore expire on the date of actual removal from the list.²² It is recommended to keep a copy of the authorisation and any documentation relating thereto in the event of inspections or queries relating to the period during which the authorisation was still valid.

10.8. What should I do if an authorisation is refused?

The Ministry of Finance shall provide reasons for its refusal. In the event of refusal, the applicant is strictly prohibited from carrying out the underlying transactions. If, however, the applicant would like the Ministry of Finance to reconsider its decision, it must provide an analysis on the basis of new facts and information and submit any relevant documentation.

²² See also the "Remedies" section.

10.9. Miscellaneous

It is important to notify the Ministry of Finance of any cases of emergency circumstances (for example, humanitarian danger).

A duly formulated application for authorisation within the context of a specific financial sanctions regime does not exempt the applicant from the requirement to submit prior notification or obtain prior authorisation, which might be provided for in other legislation, not relating to financial sanctions, whether at national or European level.

The authorisation procedure does not negate the need for ordinary procedures to determine the validity of claims against a designated person or entity, and an authorisation does not confer title.²³

Applications or queries relating to financial sanctions imposed by other Member States do not fall under the competencies of the Luxembourg Ministry of Finance; applicants should therefore contact the competent authorities of such Member States.

Lastly, it should be noted that should an entity be licensed by a Luxembourg or foreign authority, it does not mean that such entity cannot be subject to financial sanctions.

11. Problematic business relationships and transactions

⇒ **Please note:** Where at least one party to the transaction is listed²⁴, a transaction is deemed problematic, regardless of whether such party is acting as the principal or agent for the purposes of the transaction.

²³ See "Restrictive measures (sanctions) – Update of the EU Best Practices for the Effective Implementation of Restrictive Measures", Section B (Financial Restrictive Measures), XI (Guidance when considering requests for exemptions), paragraph 82.

²⁴ The term "listed" referring to persons, groups, entities and bodies is used interchangeably with the term "designated". For the purposes of this guide, these terms shall have the same meaning.

11.1. Examples of (potentially) problematic transactions²⁵

Example 1: The beneficiary is a citizen of a sanctioned country. No other party to the transaction has connections with a sanctioned country and no party is designated.

Overview

	PARTIES TO A TRANSACTION ²⁶			
	Beneficiary	Payer	Agent	Intermediary
Connections with a sanctioned country ²⁷	Yes	No	No	No
Listed	No	No	No	No

The transaction could be problematic.

If a person is connected, by way of their nationality or residence, to a sanctioned country it does **not necessarily follow** that the transaction in question **will not be in compliance** with the legal provisions (EU Regulations and other provisions).

Consequently, the operator must check whether the restrictive regime in force requires the submission of an application for authorisation to the Ministry of Finance prior to execution of the transaction in question.

And the operator must make sure that the transaction is not used to make funds, assets or economic resources directly or indirectly available to a listed individual.

In case of any doubt with respect to the compliance of the transaction with the legal provisions, please contact the Ministry of Finance **without delay**.

²⁵ The tables below illustrate examples of (potentially) problematic business relationships and shall not substitute the legal provisions in force or the requirement to assess transactions on a case-by-case basis based on relevant information relating to the parties and/or the assets concerned. In case of any doubt, the transaction shall be suspended and the competent authorities informed without delay.

²⁶ The parties to a transaction may vary according to the applicable regulatory text. In these examples, we refer to a standard transaction structure (beneficiary, payer, agent, intermediary).

²⁷ By way of residence or nationality.

Example 2: The payer is a **citizen** of a sanctioned country **and is designated**. No other party to the transaction has connections with a sanctioned country and no other party is designated.

	Beneficiary	Payer	Agent	Intermediary
Connections with a sanctioned country	No	Yes	No	No
Listed	No	Yes	No	No
<p>The transaction is problematic.</p> <p>It is essential to consult the applicable legal provisions and to ensure compliance with the legal provisions concerning, in particular, (i) the freezing of funds and other assets and economic resources; (ii) the prohibition of directly or indirectly making funds, other assets or economic resources available; (iii) the notification of asset freezes to the Ministry of Finance; and (iv) prior notification and/or authorisation requirements for the release of the assets in question.</p>				

Example 3: The beneficiary **resides** in a sanctioned country, but **is not designated**, while the beneficiary's agent is a **citizen** of the same country **and** is a **designated individual**.

	Beneficiary	Payer	Agent	Intermediary
Connections with a sanctioned country	Yes	No	Yes	No
Listed	No	No	Yes	No
<p>The transaction is problematic.</p> <p>It is essential to consult the applicable legal provisions and to ensure compliance with the legal provisions concerning, in particular, (i) the freezing of funds and other assets and economic resources; (ii) the prohibition of directly or indirectly making funds, other assets or economic resources available; (iii) the notification of asset freezes to the Ministry of Finance; and (iv) prior notification and/or authorisation requirements for the release of the assets in question.</p>				

"Red flag" indicators of potentially problematic transactions (By way of example only):

1. The transaction is inconsistent with the customer's profile;
2. The structure is not very clear (for example, there are a significant number of intermediary companies for which there appears to be no logical business or economic purpose: ⇒ could these be front companies?);
3. The splitting of a financial transaction into smaller transactions in amounts below the threshold for triggering prior notification or authorisation requirements ("smurfing");
4. The customer fails to provide information on the economic purpose and/or the parties to the transaction and/or the associated documentation (contracts, invoices, identity documents, etc.);
5. The beneficiary receives the funds in a country which is not their country of residence;
6. Moneys are made available by the payer in a country, which is not their country of residence.
7. One or more of the parties to the transaction are listed by a third country;
8. The beneficiary receives the funds on an account with a banking institution located outside of his/her country of residence;
9. One or more parties to the transaction are acting on behalf of or under the direction/control of a listed individual.
10. The transaction involves banks located in non-sanctioned countries but through which funds are transferred to sanctioned countries.

12. The freezing of funds and economic resources

12.1 Funds, economic resources; freezing and making them available - Definitions, scope of application and examples

⇒ Please note: The definitions listed are based on standard definitions. Only the applicable legal provisions are binding.

Funds ⇒ "Funds" mean financial assets and benefits of every kind, including but not limited to:

- a) cash, cheques, claims on money, drafts, money orders and other payment instruments;
- b) deposits with financial institutions or other entities, balances on accounts, debts and debt obligations;
- c) publicly- and privately-traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivatives contracts;

- d) interest, dividends or other income on or value accruing from or generated by assets;
- e) credit, right of set-off, guarantees, performance bonds or other financial commitments;
- f) letters of credit, bills of lading, bills of sale; as well as
- g) any documents evidencing an interest in funds or financial resources.²⁸

Freezing of funds ⇒ The "freezing of funds" means any action aimed at preventing any move, transfer, alteration, use of 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.²⁹

Economic resources ⇒ "Economic Resources" means assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but can be used to obtain funds, goods or services.³⁰

Freezing of economic resources ⇒ The "freezing of economic resources" means preventing their use to obtain funds, goods or services in any way, including, but not limited to, by selling, hiring or mortgaging of them.³¹

Entry into force of the asset freeze ⇒ The existing legislation shall determine whether transactions initiated prior to the entry into force of financial sanctions shall be carried out. In the absence of any specific provision, transactions shall be blocked, even if they were initiated before the entry into force of the financial sanctions. Any contractual provision to the contrary shall be null and void.³²

Making funds and economic resources available to listed persons ⇒ Making funds and economic resources available can take several forms and has been broadly interpreted by the CJUE. For example, economic resources can be made available by way of payment for goods and services, as a donation, in order to return funds previously held under a contractual arrangement, and as a swap. The fact that economic resources are made available against payment of a consideration which may be regarded as adequate is therefore irrelevant.³³ In case of any doubt, the Ministry of Finance should be contacted.

Making funds or economic resources indirectly available to listed persons ⇒ In order to establish whether funds have been made indirectly available, one must first determine whether there is "ownership", "possession" or "control".³⁴ If this is the case, making funds or economic resources available to non-listed entities or bodies, but which are owned or controlled by a listed person, entity or body will ultimately be considered as making them indirectly available to the listed person, entity

²⁸ Also see the "Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy", Section III (Standard wording for legal instruments), paragraph 60.

²⁹ Idem.

³⁰ Also see the "Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy", Section III (Standard wording for legal instruments), paragraph 61.

³¹ Idem.

³² See "Restrictive measures (sanctions) – Update of the EU Best Practices for the Effective Implementation of Restrictive Measures", Section B (Financial Restrictive Measures), III (Scope of financial restrictive measures), paragraph 33.

³³ See "Restrictive measures (sanctions) – Update of the EU Best Practices for the Effective Implementation of Restrictive Measures", Section B (Financial Restrictive Measures), VII (Economic Resources), paragraph 59.

³⁴ See the "Ownership, possession and control" section.

or body regardless of the number of intermediaries, their place of residence and notwithstanding the existence of legally separate contractual undertakings. Even if the intermediary is not an entity owned or controlled by the designated entities or persons, it may, however, make funds indirectly available for the benefit of a listed person. Each case should therefore be considered on its individual merits and the Ministry of Finance must be contacted in case of any doubt.

It is the responsibility of the operator to provide the information necessary to determine, on a case-by-case basis using a risk-based approach, that the funds or economic resources concerned will not be used by or benefit that listed person. The criteria to be taken into account include, among others:

- the date and nature of the contractual links between the entities concerned;
- the relevance of the sector of activity of the non-listed entity for the listed person or entity;
- the characteristics of the funds or economic resources made available, including their potential practical use by, and ease of transfer to, the listed entity or person.³⁵

Examples of the asset freeze measures ³⁶⇒ (1) The debiting of frozen accounts is prohibited; (2) The crediting (including the accrual of interest) of frozen accounts is not prohibited, but the amount concerned shall also be frozen; (3) Transfers are blocked in the place in which they are located at the time of their identification; (4) Cheques deposited are credited to accounts and the corresponding amount is frozen; (5) Cheques drawn on accounts are suspended pending authorisation or refusal; (6) Withdrawal and payment cards are deactivated; (7) Clearing (incl. set-off) is prohibited³⁷; (8) Purchase and sale transactions are blocked; (9) The provision of goods is prohibited notwithstanding pre-existing contractual obligations³⁸; (10) Proceeds from loans and credit facilities, received and not yet disbursed, will no longer be granted or disbursed.

The freezing and closure of accounts ⇒ It should be noted that the freezing of bank accounts does not impose an obligation to close such accounts. The closure of a frozen account is subject to prior authorisation. In this respect, consideration should be given to whether it would be better not to close the account, for the following two reasons: (a) To prevent the financial exclusion of the designated person or entity; (b) To allow the competent authorities to continue monitoring the finances of the designated person and/or entity.

Transfer of rights⇒ **Non-designated** creditors of a designated person or entity may, without authorisation, transfer to any non-designated person their financial claims against the designated

³⁵ See "Restrictive measures (sanctions) – Update of the EU Best Practices for the Effective Implementation of Restrictive Measures", Section B (Financial Restrictive Measures), VIII (Ownership and Control), paragraphs 66-68.

³⁶ For information purposes only. In the event of contrary provisions or exceptions provided for in existing legislation (for example, transactions subject to the prior notification procedure but not to the prior authorisation procedure; transactions permitted in execution of contracts concluded before a specific date specified in the existing legislation, etc.), only the applicable legislation has authoritative status.

³⁷ See "Restrictive measures (sanctions) – Update of the EU Best Practices for the Effective Implementation of Restrictive Measures", Section B (Financial Restrictive Measures), VI (Funds), paragraph 47.

³⁸ See "Restrictive measures (sanctions) – Update of the EU Best Practices for the Effective Implementation of Restrictive Measures", Section B (Financial Restrictive Measures), III (Scope of financial restrictive measures), paragraph 33.

person or entity. The designated person, entity or organism, however, needs an authorisation to transfer his, her or its financial claim against any other person or entity to any other person.³⁹

Proportionality and fundamental rights ⇒ A decision to freeze assets is taken with respect for the principle of proportionality and the fundamental rights of the individual.⁴⁰ Freezing measures are not punitive measures.⁴¹ It follows that it is neither the purpose nor the effect of these measures to submit those persons to inhumane or degrading treatment. In the absence of precise rules on this matter in existing legislation, an operator who, in good faith and in case of emergency, has not been able to comply with freezing measures due to the obligation to prevent inhumane or degrading treatment must report without delay to the Ministry of Finance.

Basic expenses ⇒ Basic expenses are defined as expenses necessary to satisfy the basic needs of the designated natural or legal persons, entities or bodies, and include in particular payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges.⁴² The Ministry of Finance shall assess each application on a case-by-case basis to determine whether or not the expenses can be considered as basic.

Unnecessary expenses ⇒ Any unnecessary expenses (e.g. numerous subscriptions for the same purpose, expenditure on luxuries, unnecessary travel costs) are subject to a prior authorisation procedure and are assessed on a case-by-case basis.

Expenses linked with a real and effective defence of the designated person ⇒ Financial restrictive measures do not affect the right to a real and effective defence. The EU Regulations contain specific provisions for the release of funds intended exclusively for the payment of reasonable professional fees and the reimbursement of incurred expenses associated with the provision of legal services. It therefore follows that the release of lump sums or sums that are not justified is not authorised. In order to allow the Ministry of Finance to determine whether there are grounds for releasing funds, applicants must submit:

- A copy of the mandate granted by the client;
- A copy of the publicly available documents relating to the case at hand;
- In the event of a request for reimbursement: copies of paid invoices;
- Otherwise, a summary of time spent and costs incurred (time sheets);
- Copies of airline tickets, hotel expense receipts and other similar documents;
- Copies of any other relevant documents.

Personal use of economic resources ⇒ It follows that the personal use of frozen economic resources (e.g. living in one's own house or driving one's own car) by a designated person is not prohibited. In

³⁹ See "Restrictive measures (sanctions) – Update of the EU Best Practices for the Effective Implementation of Restrictive Measures", Section B (Financial Restrictive Measures), VI (Funds), paragraph 46.

⁴⁰ See "Restrictive measures (sanctions) – Update of the EU Best Practices for the Effective Implementation of Restrictive Measures", Section B (Financial Restrictive Measures) X (Exemptions), paragraph 76.

⁴¹ See "Restrictive measures (sanctions) – Update of the EU Best Practices for the Effective Implementation of Restrictive Measures", Section B (Financial Restrictive Measures) III (Scope of financial restrictive measures), paragraph 32. Also see the "Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy", Sections D and E and Annex I.

⁴² See "Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy", paragraph 83 (Standard wording 1.a)) EU Regulations and UNSC Resolutions also provide for similar exemptions. See <http://www.un.org/french/sc/committees/>.

summary, assets which are only suitable for personal use or consumption, and therefore cannot be used by a designated person to obtain funds, goods or services, do not fall within the definition of 'economic resources'. No authorisation is therefore required to make them available to a designated person. In this spirit, domestic supplies of utilities such as gas, electricity, water and telephone lines are not prohibited by the Regulations, owing to their consumptive nature and consequent lack of transferability.⁴³ However, if use of frozen economic resources amounts to an economic activity, which could result in the designated person obtaining funds, goods or services (e.g. if the designated person seeks to let his or her house or his or her car), it will require prior authorisation.⁴⁴

The right to work ⇒ Financial restrictive measures do not affect a designated person's freedom to engage in work. However, payment for that work requires an authorisation. Authorisation in such circumstances should normally require payments to be made to a frozen account. Any payment in cash should be authorised explicitly. Deductions for social security and taxes may be authorised under the exemption for basic expenses (see above). An authorisation is also required to make welfare benefits available to a designated person (for example, unemployment benefits).⁴⁵

Designated legal entities ⇒ When a legal entity is designated, its continued existence as such is not prohibited. In the case of a business, freezing its assets will affect its operation and have direct consequences for third parties such as employees, creditors and others that may not have caused the listing of the entity. Business conducted with such an entity will generally involve either making funds or economic resources available to it and require prior authorisation. In order to again operate freely without any restrictions, de-listing is required.⁴⁶

12.2 Ownership, possession and control

The term "freeze" does not mean confiscation, transfer of ownership or seizure.⁴⁷

The funds and economic resources may also be owned by non-designated individuals. Consequently, it is necessary to take into consideration the notions of "ownership", "possession" and "control". Requests for authorisation are assessed on the basis of the fulfilment of the criteria of ownership, possession and control.

⁴³ See "Restrictive measures (sanctions) – Update of the EU Best Practices for the Effective Implementation of Restrictive Measures", Section B (Financial Restrictive Measures), VII (Economic Resources), paragraph 61.

⁴⁴ See "Restrictive measures (sanctions) – Update of the EU Best Practices for the Effective Implementation of Restrictive Measures", Section B (Financial Restrictive Measures) VII (Economic Resources), paragraphs 53-55.

⁴⁵ See "Restrictive measures (sanctions) – Update of the EU Best Practices for the Effective Implementation of Restrictive Measures", Section B (Financial Restrictive Measures), X (Exemptions), paragraph 77.

⁴⁶ See "Restrictive measures (sanctions) – Update of the EU Best Practices for the Effective Implementation of Restrictive Measures", Section B (Financial Restrictive Measures) IX (Designated legal Entities), paragraphs 73-75.

⁴⁷ See "Restrictive measures (sanctions) – Update of the EU Best Practices for the Effective Implementation of Restrictive Measures", Section B (Financial Restrictive Measures), II (Administrative and judicial freezing, seizure and confiscation), paragraph 28; Section III (Scope of financial restrictive measures), paragraph 32; Section VI (Funds), paragraphs 44, 48;

Ownership ⇒ The right to use, enjoy and dispose of property fully and freely subject only to such limitations as are prescribed by law.

In the case of **joint ownership** by a designated person and a non-designated person, the assets must be frozen. It is up to the non-designated person or entity to request an authorisation to use such frozen assets and/or to sever the joint ownership so that that person's share can be unfrozen. Joint ownership of the funds does not negate this requirement of the non-designated person to request prior authorisation, even though third-party property as such is not frozen by the Regulations.⁴⁸

Possession ⇒ Possession is a factual state of exercising control over an object, whether owning the object or not. A person may be in possession of property although possession does not always imply ownership. If the possessor is a designated person, the assets should be frozen at the time of implementation of the restrictive measure, even if the possessor of the property is not the owner thereof.

Control ⇒ Control is either a legal notion or is based on facts. Control is found to exist if (a) a rule establishes it, regardless whether the control is exercised or not; and (b) in practice, a person has the power to enjoy all or part of the ownership rights.⁴⁹ In both cases, assets must be frozen upon implementation of the restrictive measure.

Holding or controlling should be construed as comprising all situations where, without having a title of ownership, a designated person or entity is able lawfully to dispose of or transfer funds or economic resources he, she or it does not own, without any need for prior approval by the legal owner.⁵⁰

The freezing measures do not require persons that hold or control economic resources owned by a designated person or entity to return such economic resources to their owner, and no authorisation is required to continue such holding or controlling. However, since such economic resources are frozen, any new contractual arrangement concerning their use or any dealing with them requires prior authorisation.⁵¹

⁴⁸ See "Restrictive measures (sanctions) – Update of the EU Best Practices for the Effective Implementation of Restrictive Measures", Section B (Financial Restrictive Measures), III (Scope of financial restrictive measures), paragraphs 35 and 36; Section VI (Funds), paragraph 45; Section VII (Economic resources), paragraph 56.

⁴⁹ A designated person is considered as controlling funds without owning them if he or she has received powers to represent another non-designated person, allowing him or her to order the transfer of funds he or she does not own. The same applies where a designated person is a guardian for a minor, and therefore has the power to administer the bank account of a non-designated minor, who is the legal owner of the account. See "Restrictive measures (sanctions) – Update of the EU Best Practices for the Effective Implementation of Restrictive Measures", Section B (Financial Restrictive Measures), III (Scope of financial restrictive measures), paragraph 34.

⁵⁰ See "Restrictive measures (sanctions) – Update of the EU Best Practices for the Effective Implementation of Restrictive Measures", Section B (Financial Restrictive Measures), III (Scope of financial restrictive measures), paragraph 34.

⁵¹ See "Restrictive measures (sanctions) – Update of the EU Best Practices for the Effective Implementation of Restrictive Measures", Section B (Financial Restrictive Measures), VI (Funds), paragraph 44 and VII (Economic Resources), paragraph 60.

Overview

	Assets controlled by the owner (= designated person)	Assets held or controlled by another person (=non-designated person) who is not the owner.	Joint ownership of the assets (The owners are not all designated)
Will the assets be frozen or not? * Assets = Funds or economic resources	Assets must be frozen.	Assets must be frozen. *No prior authorisation required to continue holding or controlling the economic resources.	Assets must be frozen. In order to use their respective share of the assets, the other owners must request prior authorisation or sever the joint ownership.

The release of frozen assets or the release of non-frozen assets to a designated person ⇒ Taking into consideration the notions of ownership, possession and control, it may be considered that the release of frozen assets or the release of non-frozen assets to a designated person may take place when that person has acquired ownership of the assets or holds or controls such assets.

It is therefore necessary to assess and determine the appropriate course of action for each situation on a case-by-case basis with the assistance of the Ministry of Finance.

12.3 Legal persons – Definitions of ownership and control

Owning a legal person, group or entity ⇒ means being in possession of 50% or more of the proprietary rights of a legal person, group or entity, or having a majority interest therein.⁵²

Controlling a legal person, group or entity means any of the following:⁵³ ⇒ **(a)** having the right or exercising the power to appoint or remove a majority of the members of the administrative, management or supervisory body of such legal person, group or entity; **(b)** having appointed solely as a result of the exercise of one's voting rights a majority of the members of the administrative, management or supervisory bodies of a legal person, group or entity who have held office during the present and previous financial year; **(c)** controlling alone, pursuant to an agreement with other shareholders in or members of a legal person, group or entity, a majority of shareholders' or members' voting rights in that legal person, group or entity; **(d)** having the right to exercise a dominant influence over a legal person, group or entity, pursuant to an agreement entered into with that legal person, group or entity, or to a provision in its Memorandum or Articles of Association, where the law governing that legal person, group or entity permits it being subject to such agreement or provision; **(e)** having the power to exercise the right to exercise a dominant influence referred to in point (d), without being the holder of that right⁵⁴; **(f)** having the right to use all or part of the assets of a legal person, group or entity; **(g)** managing the business of a legal person, group or entity on a unified basis,

⁵² See "Restrictive measures (sanctions) – Update of the EU Best Practices for the Effective Implementation of Restrictive Measures", Section B (Financial Restrictive Measures), VIII (Ownership and Control), paragraph 62.

⁵³ See "Restrictive measures (sanctions) – Update of the EU Best Practices for the Effective Implementation of Restrictive Measures", Section B (Financial Restrictive Measures), VIII (Ownership and Control), paragraph 63.

⁵⁴ Including, for example, by means of a front company. See "Restrictive measures (sanctions) – Update of the EU Best Practices for the Effective Implementation of Restrictive Measures", Section B (Financial Restrictive Measures), VIII (Control), paragraph 63.

while publishing consolidated accounts; **(h)** sharing jointly and severally the financial liabilities of a legal person, group or entity, or guaranteeing them.

If any of these criteria are satisfied, it is considered that the legal person, group or entity is controlled by another person or entity, unless the contrary can be established on a case-by-case basis.⁵⁵ The fulfilment of the above criteria of ownership or control may be refuted on a case-by-case basis.⁵⁶

It should be noted that a legal person that is owned or controlled by a designated person or entity may not necessarily be included in the list of designated persons or entities. Operators may therefore request access to any relevant documents or information that would allow them to determine the identity of the persons that ultimately own or control the legal person.

An operator who is aware that a non-listed legal person or entity is owned or controlled by a listed person or entity has to inform the competent authority of the relevant Member State and the Commission either directly or through the Member State.⁵⁷

12.4 Legal entities – Typology

12.4.1 Designated legal persons that own and/or control a subsidiary

As a shareholding is regarded as an asset, the listed person may not redeem its shareholding to generate profits. No further payments shall be made for the benefit of the listed person (for example, dividend payments). The freezing of funds does not, however, affect voting rights or any legal conventions in general. The non-designated subsidiary may not, however, continue its business activity insofar as such activity involves making funds indirectly available to the designated parent company. It is therefore necessary to exercise increased due diligence in respect of business transactions with the subsidiary and to assess each situation on a case-by-case basis with assistance from the Ministry of Finance.

12.4.2 Branches of a designated company

A branch is a place of business and is not a separate legal entity distinct from the designated parent company; as a consequence the freezing will also affect the assets of branches.

12.4.3 Legal persons controlled by a designated natural person.

As the legal person is regarded as an asset, the funds of such legal persons will be frozen.

12.4.4 Joint-venture

First of all, reference should be made to the legal text establishing the financial restrictive measures. If the legal text does not contain any specific conditions relating to joint-ventures, reference should be made to the agreement establishing the joint-venture in order to determine, on a case-by-case basis, whether the activity of the latter is for the benefit of a listed person (either on a daily basis or

⁵⁵ See "Restrictive measures (sanctions) – Update of the EU Best Practices for the Effective Implementation of Restrictive Measures", Section B (Financial Restrictive Measures), VIII (Ownership and control), paragraph 64.

⁵⁶ See "Restrictive measures (sanctions) – Update of the EU Best Practices for the Effective Implementation of Restrictive Measures", Section B (Financial Restrictive Measures), VIII (Ownership and control), paragraph 65.

⁵⁷ See "Restrictive measures (sanctions) – Update of the EU Best Practices for the Effective Implementation of Restrictive Measures", Section B (Financial Restrictive Measures), VIII (Ownership and control), paragraph 71.

occasionally, for example, through the payment of dividends). The Ministry of Finance shall determine each situation on a case-by-case basis based on the information provided in the application.

12.5 The obligation to freeze, without delay, funds and economic resources

Once an operator becomes aware that the person is listed, the funds and economic resources of that person must be frozen without delay. Operators must also inform the Ministry of Finance without delay of asset freeze measures taken together with any relevant information relating thereto. The operator should provide the Ministry of Finance with any additional information that may help the Ministry of Finance to decide on the outcome of the blocked transaction.

12.6 Informing the designated person of the asset freeze

Operators are advised to inform the designated person (a) that he or she has been included on the financial sanctions list; (b) that he or she has non-contentious and contentious remedies available to him/her; (c) that he or she may request exceptional authorisation to perform a specific transaction from the Ministry of Finance provided that applicable legal provisions allow for such authorisation and in accordance with the conditions laid down by the latter. The designated person, however, is strictly prohibited from attempting to circumvent or circumventing or facilitating the circumvention of the financial restrictive measures in any manner whatsoever.

12.7 No claims clause

The EU Regulations may include a waiver of recourse clause aimed at preventing applications seeking an extension of time or payment of a guarantee/counter-guarantee and protecting European operators whose guarantees/counter-guarantees are called as a consequence of the termination of an agreement caused by sanctions.⁵⁸ It is the responsibility of the operator to determine whether it is appropriate to apply this clause, insofar as this only leads to a temporary suspension of the contractual obligations. In any event, this clause may not be invoked to withdraw the guarantees/counter-guarantees or to refuse to execute them in cases where transactions have not been suspended as a result of sanctions.

13 Limitation of liability

13.1 In the event of the operator's compliance with the financial restrictive measures

The freezing of funds and economic resources or the refusal to make funds or economic resources available, carried out in good faith on the basis that such action is in accordance with the legal provisions, shall not give rise to liability of any kind on the part of the natural or legal person or entity or body carrying out such action, or its directors or employees, unless it is proven that the funds and economic resources were frozen or withheld as a result of negligence.⁵⁹ The burden of proof of negligence lies with the person seeking to establish liability.

⁵⁸ Also see the standard wording included in the "Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy", Section III G.

⁵⁹ See standard wording included in the "Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy", Section III F.

13.2 In the event of the operator's non-compliance with the financial restrictive measures

According to existing Regulations, the financial sanctions shall not give rise to any liability of any kind on the part of the natural and legal persons, entities or bodies who made funds or economic resources available if they did not know, and had no reasonable cause to suspect, that their actions would infringe the prohibition in question.⁶⁰

This is about limiting the liability of operators who have acted in good faith. Good faith assumes that the operator had exercised due diligence before the transaction could start or continue. If an operator is unable to demonstrate the necessary due diligence he/she cannot therefore plead good faith.

In any event, if the operator becomes aware that he/she has not complied with the legal provisions, he/she must contact the Ministry of Finance as soon as possible in order to redress the situation. If necessary, such operators are advised to seek independent legal advice.

14 Lists – Databases

The lists of designated persons and entities are published by the European Commission and the United Nations on their respective websites. These lists facilitate the tracking and investigation process; however, in case of discrepancies between these lists and applicable legal provisions, the applicable legal provisions shall prevail.

The lists may be consulted on the following websites:

For the European Commission:

http://www.eeas.europa.eu/cfsp/sanctions/consol-list/index_en.htm

http://eeas.europa.eu/cfsp/sanctions/docs/measures_en.pdf

For the United Nations: <https://www.un.org/sc/suborg/fr/sanctions/un-sc-consolidated-list>

In addition, it is highly recommended that you subscribe to the Ministry of Finance's newsletter to receive emails providing the latest news and details of any amendments to the "International Financial Sanctions" section of the Ministry of Finance's website.

Subscription to the newsletter is available at the following address:

<http://www.mf.public.lu/functions/newsletter/index.php>

14.1 Homonyms

A situation of homonyms exists where:

- A person has the same first name and surname as a listed person, including cases where the first name and surname cannot be discerned from each other.
- A person has a first name and surname that differs slightly from the listed person's surname due to the possible use of different alphabets.

⁶⁰ See standard wording included in the "Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy", Section III F.

In a situation of homonyms, accounts are monitored and all transactions suspended. Such situations should be brought to the attention of the Ministry of Finance for its assessment.

It is not sufficient that the name and surname of the person concerned are identical to those of the listed person in order to conclude that it is the same person. On the contrary, other identifiers may clearly demonstrate that they are indeed two different persons. By way of example, such identifiers may reveal a different geographic location, different occupations or professions, different dates of birth, or different passport numbers etc.

Any operator that is confronted with a situation of homonyms must gather additional identifiers without delay before making any decision and keep a written record of the results of their enquiries. If, after gathering such identifiers, it can be clearly demonstrated that they are not the same person, the Ministry of Finance need not be contacted. In case of any doubt, the operator has to contact the Ministry of Finance and suspend any transactions on the account until the situation is sufficiently clarified. The limited availability of identifiers cannot, alone, justify dealings with a designated person or entity.⁶¹

⁶¹ "Restrictive measures (sanctions) – Update of the EU Best Practices for the Effective Implementation of Restrictive Measures", Section A (Designation and identification of persons and entities subject to targeted restrictive measures), II (Claims concerning mistaken identity), paragraph 9.

15 Summary of websites to be consulted (for guidance only)

Website	Link
The Ministry of Finance	http://www.mf.public.lu/publications/sanctions_financieres_int/index.html
The Ministry of Foreign and European Affairs	http://www.gouvernement.lu/4411847/mesures-restrictives
Commissariat aux Assurances	http://www.caa.lu
Commission de Surveillance du Secteur Financier.	http://www.cssf.lu/en/documentation/regulations/financial-crime/
FIU	http://www.justice.public.lu/fr/organisation-justice/ministere-public/parquets-arrondissement/lutte-anti-blanchiment/index.html
Official Gazette	http://www.legilux.public.lu
Official Journal of the European Union⁶²	http://eur-lex.europa.eu/homepage.html
Consolidated list of sanctions – EU	http://www.eeas.europa.eu/cfsp/sanctions/consol-list/index_en.htm http://eeas.europa.eu/cfsp/sanctions/docs/measures_en.pdf
Consolidated list of sanctions – United Nations	https://www.un.org/sc/suborg/fr/sanctions/un-sc-consolidated-list
United Nations Security Council Resolutions	http://www.un.org/fr/sc/documents/resolutions/ http://www.un.org/french/sc/committees/ http://www.un.org/fr/sc/documents/resolutions
EU Best Practices	http://data.consilium.europa.eu/doc/document/ST-10254-2015-INIT/fr/pdf
EU Guidelines	http://data.consilium.europa.eu/doc/document/ST-11205-2012-INIT/fr/pdf
GAFI – FATF	http://www.fatf-gafi.org/

⁶² The consolidated versions of the legal acts published on the Official Journal are not legally binding and are not always updated to include the most recent amendments to the legal act. It is therefore necessary to take into account those amendments that were published after the date of the consolidated act.

16 List of countries currently⁶³ subject to financial sanctions under EU Regulations

Belarus
 Burma/Myanmar
 Burundi
 Egypt
 Eritrea
 Iran
 Iraq
 Lebanon
 Libya
 The Central African Republic
 The Democratic Republic of the Congo
 The Republic of Guinea
 The Republic of Guinea-Bissau
 The Democratic People's Republic of Korea
 Somalia
 Sudan
 South Sudan
 Syria
 Tunisia
 Ukraine/Russia
 Yemen
 Zimbabwe

17 List of the main UNSC Sanctions Committees⁶⁴

The Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo.

⇒ <https://www.un.org/sc/suborg/fr/sanctions/1533>

The United Nations Security Council Committee established pursuant to resolution 1718 (2006) (the Democratic People's Republic of Korea)

⇒ <https://www.un.org/sc/suborg/fr/sanctions/1718>

⁶³ As of the publication date of this guide.

⁶⁴ This list comprises Committees whose sanctions include, among other things, the freezing of assets. UNSC Sanctions Committees concerning the financing of terrorism are not included. In respect of such measures, users are asked to refer to the "Best practices guide relating to the implementation of financial sanctions against certain persons, entities, bodies and groups within the framework of combating terrorism financing", which is also available for download from the Ministry of Finance's website, under the International Financial Sanctions section.

⇒ http://www.mf.public.lu/publications/sanctions_financieres_int/index.html

The Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea

⇒ <https://www.un.org/sc/suborg/fr/sanctions/751>

The Security Council Committee established pursuant to resolution 2048 (2012) concerning Guinea-Bissau

⇒ <https://www.un.org/sc/suborg/fr/sanctions/2048>

The United Nations Security Council Committee established pursuant to resolution 1518 (2003) (Iraq)

⇒ <https://www.un.org/sc/suborg/fr/sanctions/information/sanctions/1518>

The United Nations Security Council Committee established pursuant to resolution 1636 (2005)

⇒ <https://www.un.org/sc/suborg/fr/sanctions/1636>

The Security Council Committee established pursuant to resolution 2127 (2013) concerning the Central African Republic

⇒ <https://www.un.org/sc/suborg/fr/sanctions/2127>

The Security Council Committee established pursuant to resolution 1591 (2005) concerning the Sudan

⇒ <https://www.un.org/sc/suborg/fr/sanctions/1591>

The Security Council Committee established pursuant to resolution 2206 (2015) concerning South Sudan

⇒ <https://www.un.org/sc/suborg/fr/sanctions/2206>

The Security Council Committee established pursuant to resolution 2140 (2014) (Yemen)

⇒ <https://www.un.org/sc/suborg/fr/sanctions/2140>