European Commission

European Commission

Guidance for EU operators:

Implementing enhanced due diligence to shield against Russia sanctions circumvention

Introduction

The European Union has imposed unprecedented restrictive measures ('sanctions'[1]) in response to Russia's war of aggression against Ukraine and the complicity of Belarus in it. One of the objectives of the sanctions is to weaken the Russian government's ability to finance its war.

Faced with the scale of the sanctions, Russian targets have consequently deployed various techniques to circumvent these measures, for instance by using complex financial schemes, falsifying the nature or origin of the goods traded or relying on the jurisdictions of third countries. Listed persons and entities have also made efforts to conceal their assets.

As a result, there is an increased risk that EU operators will find themselves in a position where they may facilitate prohibited activities involving Russia, thereby reducing the impact of the sanctions and possibly violating EU regulations. Such increased risk justifies the development of an enhanced due diligence model, in particular for high-risk sectors and complex supply chains. EU operators incorporated or constituted under the law of an EU Member State are directly required to comply with EU sanctions law.

This guidance aims at providing a general overview of the main points of consideration for EU operators in view of their due-diligence work and is intended to support their compliance efforts. It is not meant to be an exhaustive document applicable to all sectors and types of EU operators. Depending on new circumvention patterns, the list of recommended due diligence measures will be updated accordingly. The guidance currently focuses on export-related sanctions, however EU operators are expected to have due diligence measures for all their relevant activities that might fall under the scope of EU sanctions.

In addition to this guidance, the European Commission has published lists of sanctioned Common High Priority items[2] and economically critical goods[3]. These lists are meant to support due diligence and effective compliance by exporters, as well as anti-circumvention actions by customs and enforcement agencies of partner countries determined to prevent that their territories are being abused for the purpose of circumvention of EU sanctions on Russia. Other jurisdictions publish similar information about entities that present higher risks of circumvention.

[1] Overview of sanctions and related tools (europa.eu)
[2] Common High Priority items list
[3] Economically critical goods list

Risk assessment of possible sanctions circumvention

EU operators should identify, assess, and understand the possible risks of circumvention that are most relevant for their business activity and operational model, and should take action to mitigate such risks. This should be carried out on a recurring basis, based on open-source information on the evolution of circumvention techniques. It should be noted that EU operators that set up transactions, rather than merely facilitate them, are in a better position to assess the risks and perform due diligence. In addition, depending on the nature of the transactions, the stakeholders in a position to detect sanctions circumvention may vary.

As stated in the European Commission's Frequently Asked Questions on Russia sanctions, *"EU operators have to perform appropriate due diligence calibrated according to the specificities of their business and the related risk exposure. 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, business partners and staff.*[4]*"*

To mitigate to the maximum extent possible their exposure to sanctions circumvention schemes, EU operators should conduct a strategic risk assessment, following these successive steps:

I. **Identification of threats and vulnerabilities**: EU operators should stay alert to the main techniques used by Russian actors to circumvent sanctions, as well as to emerging patterns. They should also map out the types of products, transactions and economic activities within their range of services that are at risk of being involved in Russia sanctions circumvention techniques (see 2b "Examples of typologies of sanctions circumvention").

   Examples of who might be particularly impacted and must exercise particular vigilance:

   Example (1): An EU-based manufacturer of semiconductor devices. It is well known that these goods are in high demand in Russia and their export from the EU to Russia is prohibited. The volume of exports is increasing towards third countries with which trade in such goods was previously limited or non-existent.

   Example (2): An EU-based manufacturer of items identified in the Common High Priority list. It is well known that battlefield items are in high demand in Russia and their export to Russia is subject to export restrictions from the EU.

   Example (3): An EU-based manufacturer of goods that have a very specific tariff classification and as such may or may not fall in the scope of the export ban.

   Example (4): An EU-based manufacturer of goods that may be often and easily miscategorised under an HS code not subject to sanctions.

   Example (5): An EU-based freight forwarder company that is organising the transport of the exported goods.

[4] FAQ - Circumvention and Due Diligence.pdf (europa.eu)

II. **Risk analysis:** Operators should assess the nature of the risks to which their sector, products and economic activities are exposed to, and understand how those risks can materialise. To this end, they may use risk indicators, typologies and any other relevant information that is publicly available or forms part of their specialised knowledge.

Example (1):

- main risks identified: attempts of transferring goods to Russia via third countries;
- *how can the risks be prevented:* enhanced evaluation of the risk by trained staff, monitoring of contractual arrangements for customers and business partners, ensuring the processing and end-use of the product.[5]

III. **Design of mitigating measures:** How can the risks be prevented? What are the measures to implement in order to mitigate these risks? Which are the relevant national authorities to raise operators' awareness of the risk and provide guidance?

IV. **Implementation of mitigating measures:** To mitigate the risk of circumvention, EU operators that identify higher risk areas in their business may proactively incorporate, as appropriate, the results of steps II) and III) into their internal risk management practices and procedures, and have controls in place to test the effective functioning of those procedures.

V. **Regular updating:** The evolution of circumvention techniques and the use of increasingly complex methods of circumvention require that the mapping of threats and vulnerabilities is updated whenever necessary, for instance when sanctions are amended or new sanctions are adopted, and in any case on a regular basis. This requires that the operator has satisfactory procedures in place for following and maintaining the necessary information (for example, sanctions legislation, circumvention techniques, circumvention trade flows) up-to-date. The training of the staff on these issues is of critical importance as well. Moreover, it is recommended that the senior management of a company is personally involved and informed regularly by company compliance officers on risks identified and measures taken.

By adopting a risk assessment and risk management approach to circumvention, EU operators will help ensure that measures taken to prevent or mitigate circumvention are commensurate with the risks identified.

The implementation of risk assessment and risk management should also enable EU operators to concentrate their efforts on the most sensitive cases and thus allocate their resources in the most effective way.

[5] See Notice 3 on special clause in contracts Notice 3 (2022/C 145 I/01.

1. Enhanced due diligence

Although there is no single model for conducting due diligence, EU operators should, following the assessment of circumvention risks and typologies outlined in this guidance, align their efforts to comply with the risks identified. This risk assessment and risk management approach should lead EU operators to adopt a proportionate approach, in particular by focusing on those sectors that are deemed to be most critically exposed to circumvention risks, and to accordingly put in place adequate commensurate systems to prevent those risks from occurring ('enhanced due diligence').

a) General best practices

As stated in the European Commission's FAQs, *"There is no one-size-fits-all model of due diligence. It may depend – and be calibrated accordingly – on the business specificities and the related risk exposure. It is for each operator to develop, implement, and routinely update an EU sanctions compliance programme that reflects their individual business models, geographic and sectoral areas of operations and related risk assessment. Such sanctions compliance programmes can assist in detecting red flag transactions that can be indicative of a circumvention pattern[6]".*

As a general best practice, whenever implementing enhanced due diligence (for example because EU operators' activity creates exposure to a particular risk), specific queries can be made at different levels:

On the stakeholders' level (identification and verification of business partners, customers, their representatives, their beneficial owners and other possible persons of interest):

- Is there any proven business record?
- Is there any effort from the stakeholder to maintain sanctions internal control systems / ensure sanctions compliance?
- Who are the main stakeholders involved/relevant for our business?
- Are any of the direct stakeholders (customers, distributors, agents, etc.) or indirect stakeholders (end-user, intermediaries, banks etc.) targeted by EU sanctions? Do we know all stakeholders?
- If yes, has the stakeholder undergone changes in their ownership structure upon or after the adoption of sanctions? Was it set up or established after the introduction of the sanctions?
- Are these stakeholders affected by sanctions through ownership or control[7]?
- Who is the end-user? Can the end-user certificate be provided?

[6] FAQ - Circumvention and Due Diligence.pdf (europa.eu)

[7] The EU can target individuals and entities for individual financial measures (asset freeze and prohibition to make funds or economic resources available) or for specific restrictions such as ban on all transactions (for example Article 5aa of Regulation (EU) No 833/2014). These measures can impact non-targeted entities as follows: (i) for the asset freeze measures, the assets of entities owned for more than 50 % by the designated person/entity or controlled by them must be frozen; (ii) specific restrictions applied to targeted entities can impact entities whose proprietary rights are directly or indirectly owned for more than 50 % by the targeted entities.

On the level of the transaction and flows of money, as well as transportation/logistics and route of goods:

- What is the country of origin of the goods?
- What is the country of transit and of destination? Is this country neighbouring Russia or Belarus, does it have easy transport / access (i.e. passport/shipping controls) to Russia or Belarus, or is it otherwise known to re-export goods to those jurisdictions? Should the export be subject to enhanced vigilance/end-use controls?
- Are complex/unusual transportation routes being used?
- Has the value of goods changed since the imposition of sanctions? Has the method of trading/transacting changed, for example the contract conditions imposed?
- What is the business rationale for the transaction? Does the transaction or shipment seem in line with expectations regarding the (prospective) customer from a business perspective? Or does the transaction or shipment seem unjustified from a business perspective?
- Does the transaction use complex financial schemes which are not justified by its purpose?
- Has the method of transport/shipping changed since the imposition of sanctions?
- Are there unusual or abnormal elements in the documentation that do not match (for example between financial documents and the contract)?
- Any other red flag? (see below)

On the goods level:

- Are the goods subject to any EU sanctions or export/import control rules?
- Are the goods included in the Common High Priority items list or the economically critical goods list?
- Do the goods contain components that are more likely to be disassembled and diverted for non-intended purposes?
- Are the goods similar to sanctioned ones? If the goods are shipped through Russia or Belarus, is the route standard and economically viable?
- Particular attention should be paid for exports to countries which do not apply restrictions on exports of sensitive goods to Russia and Belarus (see notice of 1 April 2022).

b) Best practices to address specific typologies of sanctions circumvention

Trade: preventing possible diversion to/from Russia and/or Belarus via third countries

EU operators should have in place adequate due diligence procedures to ensure that their operations that deal with sanctioned goods are not diverted to Russia.

First of all, especially when exporting goods subject to restrictions, EU operators need to know their counterparts and how reliable they are. They should include, in particular, contractual clauses with their third-country business partners prohibiting further re-exports of the items to Russia and Belarus. For example, such a clause may oblige the importer in third countries not to export the concerned goods to Russia or Belarus, and not to resell the concerned goods to any third party business partner

unless that partner commits not to export the concerned goods to Russia or Belarus. It is vital that the contractual clause gives rise to liability and can be enforced under the law applicable to the contract. The clause may also entail ex post verifications, and may be identified an essential element of the contract. See also the notice to operators of 1 April 2022.

It is for Member States to implement and enforce sanctions. The European Commission has the role of ensuring uniform implementation throughout the Union and monitoring enforcement by the Member States.

If a sanctioned item exported from the EU to a third country is re-exported as such to Russia, the competent authorities may consider the EU exporter's failure to conduct adequate due diligence as a violation of EU sanctions law. Any suspicious activity in the field of trade should be reported, in line with legal requirements, to the relevant national authority, such as financial intelligence units, customs and border authorities or relevant supervisory authority, if any.

Banking and finance: enhanced vigilance with regard to the use of correspondent accounts

Transactions relying on correspondent accounts can lead to a higher residual risk of sanctions circumvention.

Correspondent accounts are relationships between financial institutions that facilitate the provision of services from one (the correspondent) to another (the respondent). These services can relate to transactions for the respondent financial institution itself or on behalf of its customers, including processing wire transfers, international trade settlements, remittances, and cross-border payments.

Financial institutions that maintain correspondent accounts for foreign financial institutions are required to establish appropriate, risk-based enhanced due diligence frameworks, with policies, procedures, and processes that are reasonably designed to assess and mitigate the risks inherent with these relationships.

In the context of sanctions implementation, financial institutions should monitor transactions related to correspondent accounts to detect and prevent potential attempts to breach sanctions. Without prejudice to Anti-Money-Laundering and Counter Financing of Terrorism (AML/CFT) requirements, their due diligence frameworks should take into account the level of risk of sanctions circumvention posed by the foreign respondent.

The risks can vary depending on the respondent's profile. In practice, this means that financial institutions may conduct an adequate assessment of risks and appropriate due diligence of the risks present in:

(1) the foreign respondent's business and markets;

(2) the type, purpose and anticipated activity;

(3) the nature and duration of the relationship with the foreign respondent; and

(4) the supervisory regime of the jurisdiction in which the foreign respondent is licensed,

and design and implement controls to manage these risks effectively.

2. Circumvention red flags related to business partners and customers

Various indicators[8] should alert EU operators when they enter into a commercial relationship with a new trading partner. When conducting general due diligence, if operators find evidence of any of the indicators below, they should launch a deeper screening.

- Indirect transactions (such as those using intermediaries, shell companies etc.) that make no or little economic sense;
- New customer / transactions with companies located in countries known as "circumvention hubs" and involving items listed as Common High Priority items;
- Transit through countries or territories known as "circumvention hubs", based on the information available. Specific measures that can be taken depending on the role and responsibility of the operator, for example:
  - exporter who uses an external transport company: checks regarding the type of means of transport use, routings, use of sub-contractors etc.
  - transport company that is responsible for the transport of the cargo: checks regarding the actual goods to be transported; match with documentation etc.
- Complex corporate or trust structures linked to countries friendly to Russia or whose complexity is not justified by the business profile of the customer. Use of trust arrangements or complex corporate structures involving offshore companies;
- Business partner has been recently established or has merged with a sanctioned entity or an entity linked to sanctioned entities or persons;
- Business partner shares address with multiple different companies (i.e. it is likely a shelf company);
- Change of ownership of a corporate holding to reduce ownership stakes below the 50 percent threshold;
- Change of ultimate beneficial owner shortly before or after sanctions were imposed;
- Movement of assets previously associated with a sanctioned person, by family members or otherwise on their behalf;
- Numerous transfers of shares from sanctioned entities to non-sanctioned entities involving corporations incorporated by the same individuals or entity (often with a registered office at the same physical address);
- Potential control of an entity by a designated person, despite apparent direct ownership under the 50 percent threshold (member of Board of Directors, beneficial owner, managing director, other entities or persons on the ownership structure linked with a designated person);
- CEO/manager is never available for discussions, i.e., all communications go via a regular employee or a representative who seems to have a general Power of Attorney (PoA).

[8] This list is indicative and should be supplemented by updated typologies that may have been detected on the basis of information shared by the Commission, the Member States or exchanges with representatives of operators.

Access to EU Commission documents and resources

Commission website (opinions, FAQs)
https://commission.europa.eu/sanctions

Consolidated List of Financial Sanctions
https://webgate.ec.europa.eu/fsd/fsf

EU Sanctions Map
https://sanctionsmap.eu

FAQ on restrictive measures in the area of aviation
https://www.easa.europa.eu/en/the-agency/faqs/eu-restrictive-measures-against-russia

EU sanctions whistleblower tool

Sharing of information about EU sanctions violations can contribute to the success of investigations in EU Member States and increase the effectiveness of EU sanctions.

If you are aware of possible violations of any EU sanctions, you can bring this to the Commission's attention in a fully anonymous way. The information can relate, for example, to facts concerning sanctions violations, their circumstances and the individuals, companies and third countries involved. These can be facts that are not publicly known but are known to you and can cover past, ongoing or planned sanctions violations, as well as schemes to circumvent EU sanctions.

https://finance.ec.europa.eu/eu-and-world/sanctions-restrictive-measures/overview-sanctions-and-related-resources/eu-sanctions-whistleblower-tool_en

Contact

If you want to exchange directly with the Commission:

On EU sanctions in general
RELEX-SANCTIONS@ec.europa.eu

On EU sanctions against Russia
EC-RUSSIA-SANCTIONS@ec.europa.eu

As a non-EU stakeholder
EC-SANCTIONS-INTERNATIONAL@ec.europa.eu

National competent authorities for the implementation of EU sanctions
National competent authorities for the implementation of EU restrictive measures (sanctions) (europa.eu)