



LE GOUVERNEMENT  
DU GRAND-DUCHÉ DE LUXEMBOURG  
Ministère des Finances

# INTERNATIONAL FINANCIAL SANCTIONS

## LEGAL FRAMEWORK & OBLIGATIONS OF THE OPERATORS

OCTOBER 2019

## Financial sanctions: How are they defined?

- **Economic and financial** restrictive measures, targeted or not, that:
  - ❑ Aim to **counter threats** to the international peace and security ;
  - ❑ Aim to **change the behavior** of those that the international community identifies as responsible for these threats;
  - ❑ Do **not cause** transfer of property rights.

# Legal framework in Luxembourg

➤ **UN level – Chapter VII of the UN Charter : 14 UN sanctions regimes**

✓ <https://www.un.org/securitycouncil/sanctions/information>

➤ **EU level - Agreed by the Council of the European Union in support of specific EU Common Foreign and Security Policy (CFSP) objectives or UN Security Council Resolutions (autonomous vs. transposition measures). More than 25 EU sanctions regimes (& counting)**

✓ [https://ec.europa.eu/fpi/what-we-do/sanctions\\_en](https://ec.europa.eu/fpi/what-we-do/sanctions_en)

➤ **National level**

✓ [Law of 27 October 2010 – in process of being amended \(Draft bill 7395\)](#)

# What are your obligations?



- Reminder: Financial restrictive measures do not concern only specific sectors or types of activity. As economic operators you are obliged:
- To implement the financial sanctions without delay – important, in particular, to minimize the risk of capital flight;
- To communicate the implementation to the Ministry of Finance with a copy to the regulator and ;
- In case you would like to apply an exemption from the restrictive measure, to ask and obtain the prior authorization of the Ministry of Finance.

# Targeted financial sanctions



## ➤ Freezing of funds

*"freezing of funds" means preventing any move, transfer, alteration, use of, access to, or dealing with funds in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination or other change that would enable the use of the funds, including portfolio management.*

## ➤ Freezing of economic resources

*"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 them."*

**NOTE:** These are standard definitions; always look up the definition in the text that serves as legal basis to the restriction.

# Exemptions

IMPORTANT



- The exemptions must be provided for in the legal acts ⇒ No provision, no exemption.
- To apply an exemption, operators need a prior authorization.



Authorizations are not granted with retroactive effect.



In case of execution of a transaction despite the existence of a restrictive measure, please contact without delay the Ministry of Finance.



## Authorizations

- It is the responsibility of the operators to check whether the transaction conforms to the sanctions regimes.
- It is the responsibility of the operators to request an authorization from the Ministry of Finance, if the legal texts provide for such possibility.
- The authorization requests have to mention the legal provisions according to which they are submitted.
- Requests can be sent by letter or by e-mail to the Ministry of Finance.

## Good practices - examples



- In case of homonyms: Contact the Ministry of Finance after having carried out your analysis.
- Check the website of the Ministry of Finance for related & up-to-date documentation (e.g., opinions of the Commission, reports of the Panels of Experts, guidelines, standard forms etc.).
- Subscribe to the Newsletter of the Ministry of Finance.



## Good practices - examples



- Where applicable: Check if export licenses have been obtained.
- But remember: An export license does not exempt the operator from obtaining the authorization for the related financing & vice-versa. In case of doubt, contact the Ministry of Finance.
- Be alert towards structures that involve designated persons or entities or other parties with a history of violations (not only in financial sanctions matters).

## Good practices - examples



- Be attentive to other red flags. In case of doubt, contact the Ministry of Finance.
- Financial sanctions do not apply only in the fight against terrorism financing.
- Financial sanctions are not necessarily linked to ML – several activities or sources of income targeted by restrictive measures are perfectly legal. [Also: authorizations do not exist in a ML context.]

## Good practices - examples



- An authorization by virtue of one provision does not imply an authorization by virtue of another provision, even if the parties are the same.
- In case of doubts or questions contact the Ministry of Finance before executing the transaction.
- Prudent approach: Engage only if you can control the risk.

Questions?



**Thank you for your attention!**

