

# Vägledning om sanktioner

Rekommendationer



**SOFF**  
Säkerhets- och  
försvarsföretagen

## 1 General

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This guidance is in support of small and medium size enterprises that does not have any compliance routines since before. It applies to the company's business opportunities or activities with parties, countries or territories associated with a sanction from the United Nations (UN), the European Union (EU), the UK, the Organisation for Security and Cooperation in Europe (OSCE), country specific sanctions or other bi- or multilateral sanctions. Export controls are managed separately and applicable export control authorities are highly likely to deny at least all military export authorisations for business opportunities relating to sanctioned parties and parties in sanctioned countries or territories. If there is any doubt, seek legal advice.

For the purpose of identifying sanctioned parties all external parties to all ongoing business transactions where the company is involved should be both initially and continuously screened against applicable sanction lists. All personnel directly involved in business with third parties need to be aware of which countries the parties in their transactions comes from, or are established in, as well as if those countries or territories are under sanctions.

## 2 Sanction principles

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A general advise is that the company does not initiate, pursue or otherwise get involved in either direct or indirect business with sanctioned parties or parties in sanctioned countries or territories. However, note that there are many different kinds of sanctions, where some are blocking which implicates a total freeze of all funds for the sanctioned party, while others only target specific industry sectors, so called sectoral sanctions. If a party is subject to sectoral sanctions, this does not necessarily mean that every transaction is prohibited. Thus, provided that all the relevant conditions and restrictions are met, sectoral sanctions do not hinder continued business. Moreover, the numerous country specific sanctions are only applicable if the transaction has a connection to the country in question.

Due to these differences in how sanctions apply, it is critical to determine if the business opportunity is subject to any sanction and which, and if so, ensure adherence with all relevant restrictions in all applicable sanctions. The company should not initiate or pursue any business opportunity that can even be suspected to violate any sanctions without proper review.

- The company should prior to initiating or pursuing a business opportunity make an initial review and determine if it contains any direct or indirect:
  - o sales, provisioning or similar activities relating to a sanctioned party or to a party in a sanctioned country or territory,
  - o procurement or other acquisition of products, technology or services from a sanctioned party or from a party in a sanctioned country or territory,
  - o financing or funding activities relating to a sanctioned party or a party in a sanctioned country or territory,
  - o provisioning of transportation, insurance or investment services by, to or from a sanctioned party or by, to or from a party in a sanctioned country or territory,
  - o brokering on behalf, to or from a sanctioned party or on behalf, to or from a party in a sanctioned country or territory,
  - o payment of salaries or fees to a sanctioned party or a party in a sanctioned country or territory,
  - o payments in US dollars or Euro to a sanctioned party or a party in a sanctioned country or territory, or
  - o other transactions with a sanctioned party or a party in a sanctioned country or territory.

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- The company should not initiate or pursue any type of business opportunity relating to export controlled military products or technology destined for a sanctioned party or to or from a party in a sanctioned country or territory if the sanction includes an arms embargo.
- Notwithstanding the principle expressed in the bullet immediately above, the company may support the armed forces or other customers in international peace keeping or humanitarian missions in countries subject to a sanction as long as the support does not violate the terms of the sanction.

If any transaction meets any of the above listed criteria in bullet 1, sub-bullets 1-8, or otherwise is suspicious from a sanction point of view, a thorough sanction due diligence needs to be performed and prior to the company initiating or pursuing the business opportunity, it is advised that the company's management makes the final decision.

### **3 Information required for sanction due diligence**

Regarding hits in the screening tool where the party is situated or established outside a sanctioned country or territory it is important to determine how the sanctioned party effects the business. If the counterparty itself is on the sanction list, it is important to determine if the business transactions are prohibited. If the owner or any person within the management of the business party is subject to sanctions, it is also important to determine the level of ownership and control, since the company itself can be subject to restrictions if the sanctioned person is considered to "own or control" the company. Due to this it is just as important to screen the indirect owners, as the direct owners and other persons that may be considered in control (CEO/Board).

To enable a sanction due diligence, the company should provide the following information:

- Detailed description of the business setup, timeline and activities including which party will do what.
- Which products or technology is involved as well as which countries the embedded parts or technology emanates from. Detail specifically if any export controlled product, software or technology is involved and if licenses or financing will be required.
- Which types and how many individual transactions there will be in the business opportunity and which currency will be used in each transaction.
- A list of parties involved in the transactions, including but not limited to the following information:
  - o roles such as buyers, sellers, end-users, advisers, investors, intermediaries, brokers, banks, financial institutes, insurance- and transportation service providers, etc.,
  - o which party is sanctioned or situated/established in a sanctioned country or territory, including screening results of those parties and which lists the party is sanctioned in.
  - o organisation and ownership structures of each sanctioned party or party in a sanctioned country or territory (including sanctioned ultimate beneficial owners).
- A risk assessment of the business opportunity including a list with all necessary compliance and mitigation actions.
- The company is recommended to first do a risk assessment, set a routine and follow it in terms of the ongoing work with (i) onboarding due diligence and (ii) recurring due diligence / screening in high-risk markets. Later complete a report and draft a sanction compliance routine based on the result of the due diligence.

The company is also recommended to apply for an authorisation if possible and required.

Sanctions are complex frameworks and it is advised that a competent law firm is contracted to provide advice to investigate if it is possible to pursue a business opportunity without violating any restrictions in applicable sanctions. In doing so, consider specifying against which sanctions lists the screening should be conducted at a minimum.

## 4 Decision making

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A decision to proceed with a business opportunity relating to a sanction should be conditioned on:

- a due diligence report should be established to show that there are no unmitigatable risks,
- lists showing identified sanction risks including mitigation actions,
- ensuring that sanction compliance routines are established, and
- a written approval from management. (e-mail correspondence sufficient)

In the event of a management or authority denial, no activities with the sanctioned party or parties in a sanctioned country or territory must be initiated, pursued or continued.

## 5 Changes after initial approval or contract effectiveness

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Changes in a business opportunity that is subject to a sanction must during the term of the business opportunity, and after the initial sanction due diligence, be equally vetted and agreed prior to any further activity. Also, if a party, country, territory, activity or product in a transaction becomes sanctioned during the course of business, all activities must immediately be suspended and the business opportunity must be equally vetted and approved prior to any further activity.

Changes in a sanction may result in that the business opportunity needs to be suspended or terminated.

## 6 Responsibility for compliance and risk management

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The company should ensure compliance with applicable sanctions, restrictions and this instruction relating to the business opportunity.

It is recommended that board members, the sales team, employees responsible for regulatory compliance, etc., are aware of the importance of complying with sanctions and export control. Thus, it is also highly recommended that all relevant roles are offered proper annual training in order to keep themselves updated.

The company should continuously manage and mitigate all identified sanction risks, alternatively suspend or terminate the business opportunity.

## 7 The Cost of Non-Compliance

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### *Investigations*

- Expenses for all investigation costs, including the monitors' fees and subsistence including authority's requirement for transparency
- Complete or partial cessation of operations while investigation is ongoing
- Licensing authority might withhold new licenses while investigation is ongoing
- Risk that the investigation escalates and affects others (suppliers, customers, etc.) - A small event can have major consequences because the overall picture determines when the authority acts and judges.
- Unclear time frame for investigation
- Need of legal assistance

Note: Lack of compliance locally can lead to global consequences.

### *Penalties*

- Civil fines and penalties (strict liability)
- Criminal fines and imprisonment (knowing violations)

Note: Common to all legal frameworks is that penalties for violation include seizure/forfeiture of the goods as well involved and denial of the export privileges.

### *Consequences*

The negative effects of being blacklisted can be quite considerable, with huge inconvenience being the least of them. More severe effects include loss of credibility and goodwill, a decline in business and clients, and financial hardship.

- Lawsuits and claims for damages from affected customers, suppliers and other partners
- Restricted Parties Listing (Black Listing)
- Denied export or/and reexport privileges
- Risk of losing brand and corporate reputation - Negative publicity, "headline risk"
- (Re)Implementation of Internal Compliance Program (ICP)
- Logistical problems/business disruption

Note: Remedial measures often more costly/burdensome than actual penalties.

## 8 Contract terms

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Business agreements, offers, request for offers or equivalent documents should, as relevant, contain a clause including provisions both for managing new, or re-activation of previous, sanctions. Additionally, it is beneficial if a force majeure clause covering acts of government and sanctions is included in the agreement. It is beneficial if at least the following texts is adapted and included in any contractual documents:

“Both parties undertake to continuously comply with all restrictions in sanctions (including arms embargoes) directly or indirectly applicable to the business opportunity. This include sanctions from the European Union (EU), the United Nations (UN), the Organisation for Security and Cooperation in Europe (OSCE), other bi- or multilateral sanctions as well as individual countries’ sanctions. In the event either party is in breach of this section, the other party may terminate the agreement immediately.”

And

“Each Party shall promptly notify the other Party if the Party or any party in their supply chain is, or becomes, listed in any sanction, embargo or other denied parties list or if the Party’s export privileges are otherwise denied, suspended or revoked in whole or in part by any governmental entity. Each Party shall timely inform the other Party of violations of any applicable trade control rules, undertakings or authority restrictions if such violation may affect the other Party, including but not limited to any suits, actions, proceedings, notices, citations, inquiries, or other communications from any government agency concerning any actual or alleged violations, in the Party’s performance under the agreement and the Party shall comply with all reasonable requests from the other Party for information regarding any such violations.”

We also recommend on including US sanctions to the extent that it is not prohibited under EU Blocking Statute. And, for countries with blocking regulations (e.g. China and Russia) there is a need to ensure what jurisdiction applies and maybe wording of clauses. Moreover, termination and cooperation clauses is also recommended.

## 9 Examples of sanctioned activities

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Each sanction is regulated differently to ensure minimal negative impact for the civilian population. Therefore, they all encompass different restrictions. However, there are many commonalities and to understand which types of activities that may be included, a non-exhaustive list of examples of business activities that may be subject to sanctions is provided:

- travelling to the country with a computer or sending e-mail
- initiating communication regarding a business opportunity
- providing technology
- marketing, promoting, offering or requesting offers
- buying, selling or contracting
- exporting to, or importing from, the country
- paying salaries or fees to denied parties or to entities in the country
- portfolio management on behalf of a denied party
- bank transactions, financing or funding
- insuring or investing in the country
- transporting or brokering to or from a denied party or the country
- products or technology for certain sectors listed in the embargoes or sanctions, also known as sectoral sanctions.

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## 10 Selected list of countries subject to sanctions

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The following countries, regions and sectors occur on the EU, OSCE and UN sanctions as of 2022-03-10. Sanctions changes from time to time and prior to making any determination, always consult the, at the time, applicable sanctions (see the link chapter below for examples). We recommend that the company continuously update the sanctions risk list and consider other countries also that are known for facilitating circumvention.

- Afghanistan – The Taliban – Arms embargo
- Armenia and Azerbaijan – Regional Nagorno-Karabakh – Arms embargo
- Belarus – Arms embargo
- Bosnia and Hercegovina
- Burundi
- Central African Republic – Arms embargo
- China – Political Arms embargo
- Cuba – US – Arms embargo
- Democratic republic of the Congo – Arms embargo
- Egypt – Political advice – limited restrictions against equipment for internal repression
- Guinea Conakry
- Guinea-Bissau
- Iraq – Arms embargo
- Iran – Arms embargo
- Lebanon – Arms embargo
- Libya – Arms embargo
- Mali
- Moldavia – Leaders in the Transnistria region
- Myanmar/Burma – Arms embargo
- Nicaragua
- North Korea – Arms embargo
- Russia and seized regions in Ukraine – Arms embargo
- Somalia – Arms embargo
- Sudan – Arms embargo
- South Sudan – Arms embargo
- Syria – Arms embargo
- Tunisia
- Turkey – illegal drilling in the Mediterranean
- Venezuela – Arms embargo
- Yemen – Arms embargo
- Zimbabwe – Arms embargo



Other types of sanctions against:

- Chemical Weapons
- Terrorism
- Cyber-attacks
- Serious violations of human rights

## 11 Record keeping

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The company is recommended to keep records of all sanction due diligence reports and decisions concerning a business opportunity that relates to a sanctioned party, a sanctioned country or territory for at least 10 years after the contract has been fulfilled, the business opportunity has been lost or after the decision to not pursue the business opportunity has been taken. The following records shall be dated and kept in addition to any business documentation:

- commercial documents such as invoices, manifests and transport and other dispatch documents
  - relevant correspondence
  - screening results
  - due diligence reports
  - external counsel advise (if applicable)
  - risk assessments
  - compliance routines
  - the approval or denial decision
- Other types of sanctions against:
- Chemical Weapons
  - Terrorism
  - Cyber-attacks
  - Serious violations of human rights

## 12 Links to selected sanctions

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EU sanctions	<a href="#">Sanctions in force</a> , EU Restrictive measures map
UN sanctions	<a href="#">Sanctions in force</a> , UN Security Council sanctions
OSCE sanctions	<a href="#">Sanctions in force</a> , Nagorno-Karabakh (Armenia/Azerbaijan)
US sanctions	<a href="#">Sanctions in force</a> , US Office of Foreign Assets Control
UK sanctions	<a href="#">Sanctions in force</a> , UK Business and Industry
AU sanctions	<a href="#">Sanctions in force</a> , AU Dept of Foreign Affairs and Trade
SE sanctions	<a href="#">Sanctions in force</a> , Ministry of Foreign Affairs
SE arms embargoes	<a href="#">Arms embargoes in force</a> , Inspectorate of Strategic Products