

The reach of foreign sanctions

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A trader in Zug must comply with Swiss sanctions. In practice, it must also take into account the sanctions of the European Union, the United Kingdom and the United States, because their reach extends beyond their territories.

The sanctions of the European Union apply to companies incorporated in a member state, to nationals of member states wherever they are, and to business done in whole or in part within the Union. A Zug trader with a European subsidiary, European employees or business in European ports is exposed to them. Since 2024, European companies must also use their best efforts to ensure that their subsidiaries in third countries do not undermine the sanctions.¹ The sanctions of the United Kingdom apply to British companies and nationals and to conduct in the United Kingdom, including the use of the London markets for metals, insurance and shipping. The sanctions of the United States reach furthest. They apply to American persons and to transactions in dollars that pass through the American financial system, which includes most international commodity transactions. Beyond this, the United States can impose secondary sanctions on non-American companies that engage in certain transactions with sanctioned parties, cutting them off from the American market and financial system. It also prosecutes non-American companies whose conduct has a sufficient connection with the United States.²

For a trader in Zug, the combination of these regimes means that the Swiss sanctions set only the minimum. A transaction that is lawful under Swiss law may violate the sanctions of the United States. The consequences, the loss of access to dollar payments, to American banks and to American customers, can threaten the trader's existence. The compliance programmes of the traders are therefore designed to comply with the strictest of the applicable regimes, as their banks, which are exposed to the same regimes, insist.

1 Notes

1. Latham & Watkins, "EU Introduces 'Best Efforts' Requirement for Non-EU Subsidiaries Not to Undermine EU Sanctions Against Russia", 9 August 2024, lw.com, and Gibson Dunn, "The Long Arm of EU Sanctions?", gibsondunn.com: Art. 8a of Regulation (EU) No 833/2014, inserted by Regulation (EU) 2024/1745 of 24 June 2024 (14th package), requires EU operators to undertake their best efforts to ensure that non-EU legal persons they own or control do not participate in activities that undermine the restrictive measures. ↩
2. OFAC, FAQ 11, ofac.treasury.gov: all U.S. persons must comply, including U.S. citizens and permanent residents wherever located, all persons within the United States and U.S.-incorporated entities with their foreign branches; non-U.S. persons may not cause U.S. persons to violate sanctions (the basis for the reach of US sanctions over dollar payments cleared through US banks); some programmes extend to foreign subsidiaries of U.S. companies. Davis Polk, "Russia sanctions update: U.S. expands secondary sanctions regime for foreign financial institutions", 8 January 2024, davispolk.com: Executive Order 14114 of 22 December 2023 authorises OFAC to impose secondary sanctions on foreign financial institutions that conduct or facilitate significant transactions involving Russia's military-industrial base, including full blocking or the prohibition of US correspondent accounts, which cuts them off from US dollar transactions, even where they act entirely outside US jurisdiction. ↩

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