

Three years of sanctions

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Sanctions against Russia, Eastern-Ukraine & Crimea

Update and practical information.
3 years of sanctions

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Topic of the presentation

- This presentation focusses on the questions: what was the initial reason for the EU sanctions against Russia, Eastern-Ukraine and Crimea, why there are (still) sanctions and how to do business despite the sanctions.
- Until today: not any sanction regulation has been lifted. (Only some individuals have been removed).
- This presentation is not an academic exposure. It does not contain political statements. The presentation gives just a helicopter view of the sanctions from a legal and commercial point of view.

History of the sanctions in a nutshell, sheet 1 (of 2)

- 5 March 2014: first round of sanctions: against ex president of Ukraine Victor Janukovych (who left the country at 22 February 2014) and against his political surrounding (regulation: EU 208/2014).
- 17 March 2014: second round of sanctions: against Eastern-Ukraine (as a result of the elections of 16 March on Crimea), more specific against persons and companies undermining the territorial integrity of Ukraine (EU 269/2014).
- 31 July 2014: extension of the second round of sanctions with the so called embargo on dual-use goods and technology, and financial restrictions also as a result of “destabilising” Eastern Ukraine (EU 833/2014).

History of the sanctions in a nutshell, sheet 2

- 23 June 2014: third round of sanctions: against Crimea and Sebastopol (regulation EU 692/2014): import and export ban of nearly all goods to Crimea and Sebastopol, including a travel ban. Persons who want to travel to Crimea, have from a EU perspective to ask for a permission at forehand and to travel to Crimea via Ukraine and not via Russia on a Russian visa.
- 8 september 2014: extension of the second round of sanctions: added to the sanctionlist Rosneft.

First round of sanctions, Why? Let's visualise

- The first round of sanctions have been imposed to Yanukovich and former politicians by the EU because of: “Misappropriation or embezzlement of Ukrainian Statefunds and their illegal transfer outside Ukraine”.
- **An unexpected “player in this field”**: the drone because in some seconds the drone registrates what the EU means with misappropriation of statefunds:
- <https://www.youtube.com/watch?v=Wf-kucVG2p4>

Castles in Ukraine of listed and non-listed persons

- Yuriy Ivanyushenko, former parliamentarian for the party of the regions (nr. 20 on the sanctionlist). Listed since 15 April 2014. What you see in the following video is an estate under construction on 35 ha including three lakes.
- Comparable video's about nice estates of former president Yanukovyich (Mezjigorje, Kyiv oblast) and of the current president Poroshenko (selo Kozin, Kyiv oblast) you can find at youtube. A short impression of the Poroshenko estate (paid: 6400 grivna per 100m²= EUR 221,- volgens huidige koers):
<https://www.youtube.com/watch?v=sMzKeFU3wxi>

Court proceedings against the EU sanctions

sheet 1 of 5

Example, assetfreeze case:

Two starting points:

- Unfreeze procedure of assets in the respective memberstate EU;
- Anullment procedure against the regulations (verordeningen) and against individual decisions (besluiten) at the Court of Justice in Luxembourg.
- This has all to be done within the official objection/appealation period.

Procedures against sanctions sheet 2 of 5

- National procedures against asset freeze:

For example:

- A trust company receives a letter of the DNB and of a Dutch bank to freeze the assets from all persons on the sanction list. This is an administrative law measure (bestuursrecht). This means that within 6 weeks an objection has to be filed. However to unfreeze the assets, the underlying decision that puts a person on the sanctionlist has to be annuled. Therefore you have to go to the European Court of Justice in Luxembourg. (This is what Rosneft has done and took them more than two years to get an answer of the Luxembourg court).

Procedures against sanctions sheet 3 of 5

- Undersigned went to Luxembourg twice to attend hearings regarding annulment procedures of listed persons. The last time was: today, 6 April 2017. Today it was to mr. Klimenko to defend his case. Klimenko (nr. 21 on the sanctionlist) was the former minister of taxes and customs during the Yanukovyich regime.
- The topic of my PhD research is a detailed study of the court decisions in the sanction cases, also from a legal point of view. This is a very interesting topic, but today there is not time enough to explain the situation in detail.

Procedures against sanctions sheet 4 of 5

- For today it is interesting to know that until now, only 1 person won a case against the Council of the EU at the Court of Justice in Luxembourg and was delisted as a result of this decision. This is mr. Portnov (nr. 5 on the sanction list), a professor in Law at the Shevtsjenko University of Kyiv. He prepared a very detailed and professional appeal, with very clear and confronting evidence – and he won. Some others (like Yanukovych) won, but were not delisted because of new arguments to continue listing. Again, to describe the Portnov and other cases today is too specific.

Procedures against sanctions sheet 5 of 5

- Rosneft, the well known Russian oil company. Rosneft set-up court proceedings in Great Britain against the listing. The High Court of Justice (England & Wales), Queen's Bench Division declared itself competent. However the questions were so specific that the court decided to ask prejudicial questions to the Court of Justice in Luxembourg. Prejudicial questions, national courts can ask in order to clarify uncertainty in (in this case) EU sanction regulations. Only last week, more than two years later the Court of Justice decided (after a procedure, initiated at 18 February 2015). Decision: (summarized) no annulment of sanction regulations, all complaints dismissed (Case C-72/15).

Sanction's do's and don't sheet 1 of 2

- The do's and don'ts depends on the branch you are working for, but in any case: check the sanction list before starting business. A clear updated pdf overview you can find at the [eeas.europa.eu](https://eeas.europa.eu/eeas/) website. Always check the whole UBO structure because in the regulations is mentioned that the sanctions applies to: everybody who directly or indirectly provide sanctioned goods or services.
- Everything what is forbidden, such as exporting dual-use goods, materials for the gas exploration, financial restrictions for Russian banks, export-import restrictions from Crimea, are clear described. The attachments to the EU regulations (bijlagen) consists of lists of forbidden goods with their GN-codes. So this is clear in order to understand: aloud or not, and also clear if someone wants to "get around" (omzeilen)

Sanction's do's and don't sheet II

- Is it a good idea to wait until the sanctions are lifted? No, this can take several years. Better to look for alternatives.
- Always complain against a decision of a bank, tax inspectorate etc. because the appeal period amounts to 6 weeks and no day longer. Then you can ask to keep the case on hold until the case in Luxembourg has resulted in a court decision.
- Restrictive measures (sanctions) are not lifted until now, even if the initial reason for imposing them appears false or null and void. For example: persons do not have assets in the EU at all, how they can be frozen? The EU continues listing by giving the second year new reasons for listing. The damage is caused already. This topic is also part of my research.

THANK YOU FOR YOUR ATTENTION

- QUESTIONS/STATEMENTS?
- Вопросы/ДЕЛИТЬ ОПЫТОМ?

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