

# EU sanctions against Crimea

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# EU sanctions against Crimea

Topic of the presentation:

Violation of Crimean sanctions, facts and possible remedies

Based upon the Case of Dutch companies helping construct the Kerch bridge.

- 1) How to uncover sanctions violations?
- 2) Who should do that?
- 3) What ways of avoidance are the most common?
- 4) How to close the loophole for these violations?
- 5) What the Ukrainian side can improve to facilitate the work of European law enforcement agencies?
- 6) What regulations are the most common, why do we have just a few precedents of the responsibility for the violations of sanctions?

# About the PhD research of Heleen over de Linden and the topic of today

- Started in September 2015: as a result of the EU sanctions, imposed on 5 March 2014 against the former regime of Ukraine: Yanukovich and his associates for alleged: “Misappropriation of Ukrainian state funds”
- Council Regulation EU 208/2014 and Council Decision 2014/119 CFSP of 5 March 2014.
- The legal aspects of the measures: freezing funds in the EU. Place of the Council Decision in the system of preservation of assets during court proceedings. This is not the topic of the todays discussion.
- Today: (Council Regulation EU 692/2014): “Restrictions on economic relations with Crimea and Sevastopol” adopted in response to the annexation of Crimea and Sevastopol by the Russian Federation.
- The restrictive measures in response to the annexation of Crimea apply to EU persons and EU based companies. They are limited to the territory of Crimea and Sevastopol.
- These measures include:
  - an **import ban** on goods from Crimea and Sevastopol
  - **restrictions on trade and investment** related to certain economic sectors and infrastructure projects
  - a **prohibition to supply tourism services** in Crimea or Sevastopol
  - an **export ban** for certain goods and technologies
- On 21 June 2021, the Council extended these measures until **23 June 2022**.

# The case of the Kerch bridge

- 1 september 2017, the Dutch Newspaper De Gelderlander reported about two small Dutch companies, assisting building the Kerch bridge.
- May 2018 and July 2018, it became clear that possibly more companies infringed the sanction regulations. Difficult to find evidence for the Dutch prosecutors office. Until today no verdicts. In 2019 the Dutch prosecutors office was still searching for evidence. In 2021 they don't provide any information to third parties on the procedures anymore.
- In the next sheet: links to the Dutch newspapers on the scandal. Often first page news.

# Kerch bridge: who infringed the sanctions, *how to uncover?* By media

- First article in newspaper about assistance of Dutch companies in building the Kerch bridge: 1 september 2017
- <https://www.gelderlander.nl/rivierenland/nederlandse-bedrijven-bouwen-mee-aan-foute-brug-naar-de-krim~a335c8b5/>
- Dematec Equipment, Dodewaard (heihamer)
- Bijlard Hydrauliek, Milsbeek (spareparts for the heihamer).
- May and July 2018 followed by new scandals: More companies are under suspicion, including Akzo Nobel (coatings) and Mammut (technology). Until today no convincing evidence in the newspapers.
- <https://www.trouw.nl/nieuws/strafrechtelijk-onderzoek-naar-zeven-nederlandse-bedrijven-wegens-betrokkenheid-bij-een-brug-naar-de-krim~b54a840f/>
- <https://rechta.com/wp-content/uploads/sites/3/2018/07/Sancties.pdf>
- <https://www.enerpac.com/en-us/> Enerpac Heavy Lifting Technology (Hengelo)
- <https://www.tubantia.nl/hengelo/enerpac-uit-hengelo-deed-verboden-werk-aan-russische-krimbrug~a510e545/?referrer=https%3A%2F%2Fwww.google.com%2F>

# Which parties have to play a role?

## 2) *Who should uncover?*

- Dutch prosecutors office: in cooperating with the Ukrainian PO and should publish on a yearly basis about the current situation. The PO may publish the court decisions, as it has done with the Iran court case:  
<https://www.om.nl/actueel/nieuws/2017/08/21/eis-twee-jaar-gevangenisstraf-voor-uitvoer-verboden-goederen-naar-iran>
- The Minister of International Trade may stress on a regular basis in the media the importance of investigating in the infringements of the EU sanctions and do have her own task force.  
<https://www.nu.nl/politiek/4904765/onderzoek-bijdrage-nederlanders-bij-bouw-omstreden-krim-brug.html>
- Dutch parliamentarians have to ask questions in the Dutch Parliament to the Minister, on the effectiveness of the sanctions, as done before. <https://zoek.officielebekendmakingen.nl/ah-tk-20162017-2026.html>
- Journalists have to focus on one or more countries under the EU sanction regime and do their own investigations. On the example of De Gelderlander.
- The Dutch customs have to do their work conscientiously and work via a so called “flow chart”.
- With respect to strategic goods (dual use goods) the Dutch customs declared that this is a priority because of the political and social relevance. Other goods have less priority.  
[https://www.belastingdienst.nl/bibliotheek/handboeken/html/boeken/HVGEM/strategische\\_goederen-taakverdeling.html#HVGEM-d2649e338](https://www.belastingdienst.nl/bibliotheek/handboeken/html/boeken/HVGEM/strategische_goederen-taakverdeling.html#HVGEM-d2649e338)
- [https://www.belastingdienst.nl/bibliotheek/handboeken/html/boeken/HVGEM/strategische\\_goederen-  
risicobeheersing.html#HVGEM-d2729e20](https://www.belastingdienst.nl/bibliotheek/handboeken/html/boeken/HVGEM/strategische_goederen-risicobeheersing.html#HVGEM-d2729e20)



# Quote of Dutch Minister of foreign Trade

- On 1 September 2017, when the scandal on the building of the Kerch bridge became public, our minister Ploumen announced that The Netherlands shall not accept the normalisation of the situation in Crimea and that assistance for building the bridge, is an example of what have not to become daily practise. Even if there is no infringement of the sanctions, Dutch entrepreneurs has to do business in a social responsible way and not undermining the sanctionregime.
- Since 1 september 2017: no news, no update of the Minister.

Understanding how to circumvent = knowing how to act  
*3) What ways of avoidance are the most common?* (first sheet)

- Let's start with the hehamer for the building of the Kerch bridge.
- The hehamer has been exported from the Netherlands in the beginning of 2016 as spareparts to Russia (by sea). Near to Saman the spareparts have been collected and spared to a hehamer.
- The answer of the Director of the responsible company argued that “according to the EU sanctions we have not to work on Crimea, but we can work in Russia as we did.” (This is not true, as will be explained in a following sheet).
- Other example: The German company: Metro Group, who just “changed boots”. This shop stopped working in crimea just after the annexation. They had shops in Sebastopol and Simferopol. The pretext to be closed: reinventarisation.
- More ore less the same story with the French hypermarket Auchan in Simferopol.



Understanding how to circumvent = knowing how to act  
*3) What ways of avoidance are the most common?* (second sheet)

- The cases of the aforementioned supermarkets, can be the same with companies as Akzo Nobel, present in Crimea. The system is easy, but if prosecuted: forbidden. Reason: directly or indirectly owned. On the paymentslip of Metro supermarket is indicated a company name of a Moscow located firm (OOO «Retail property 6»). This retail firm is a daughter of Retail property 5, located also in Moscow. Property 5 is a 90 % daughter of the German Metro Group Retail Real Estate GmbH and 10 % daughter of Dutch Metro Property Holding B.V.

# Why the cases are not brought to justice?

- Difficulties to find legally binding **evidence**. The infringements takes place abroad. In the Netherlands the requirements for the evidence in criminal cases are high. So even court cases are not set up because of the risk of loosing the cases.
- Possibly the Dutch customs have no capacity to check possible infringements.
- A very imporant reason: likely the EU imposed sanction to fulfill the wishes of the Ukrainian opposition in 2014. The annexation of Crimea is a high political sensitive issue. We all know that Russia will not just give back Crimea to Ukaine. Maybe the EU argued: **you win some** (association agreement with Ukraine) and **you lose some** (Crimea).
- According to the Ukrainian foundation: 'Maidan foreign affairs' which investigates how companies circumvent the sanctions. They concluded that nobody is following the companies, so nobody verifies if sanctions have been infringed. The foundation requested the Ukrainian Government to incorporate a group to investigate, to do the lobbywork. Based upon their opinion the EU is not active in following possible infringements. <https://ru.krymr.com/a/28044057.html>

# COUNCIL REGULATION (EU) No 692/2014 of 23 June 2014 concerning restrictive measures in response to the illegal annexation of Crimea and Sevastopol (amended on 20 December 2014).

- to sell, supply, transfer, or export goods and technology as listed in Annex II transport; (ii) telecommunications; (iii) energy; (iv) the prospection, exploration and production of oil, gas and mineral resources (Dutch companies, assisting building the Kerch bridge)
- provide, directly or indirectly, financing or financial assistance related to the goods and technology as listed in Annex (Dutch companies, assisting building the Kerch bridge)
- It shall be prohibited to provide technical assistance, or brokering, construction or engineering services directly relating to infrastructure in Crimea or Sevastopol in the sectors (Dutch companies, assisting building the Kerch bridge) to provide services directly related to tourism activities in Crimea or Sevastopol. 2. In particular, it shall be prohibited for any ship providing cruise services. (Booking.com in the beginning of the sanctions).
- acquire any new or extend any existing participation in ownership or control of an entity in Crimea or Sevastopol, including the acquisition in full of such entity or the acquisition of shares, and other securities of a participating nature of such entity; (Metro and Auchan hypermarket).
- Meaning of **entity**: ‘entity in Crimea or Sevastopol’ means any entity having its registered office, central administration or principal place of business in Crimea or Sevastopol, its subsidiaries or affiliates under its control in Crimea or Sevastopol, as well as branches and other entities operating in Crimea or Sevastopol;
- knowingly or intentionally, in activities the object or effect of which is to circumvent the prohibitions (All of them).

# Another type of infringements

- After the annexation of Crimea, companies had the right or obligation to re-register and or to be sold.
- In the year 2017 the Russian Federation announced the programme “Privatization”. 13 companies with Ukrainian state participation or wholly owned by the Ukrainian government has been sold.
- These companies were the pearls of Ukraine: sanatoria (Julebert, Mischor en Ai Petri), all known by governmental employees because they resided in these sanatoria.
- Also huge military objects have been sold: Evpatori ai reparation factory, Feodosinski optical factory, Scientific-research institute airsystems (Feodosia) and shares in the factory Fiolent.
- Not less important: the famous wine factory: Novy Svet, which has been sold in 2017 to a person of the Putin entourage and the Bank of Russia.
- The objects have been sold by auction. Then they changed names or/and have been transferred to other parties.
- <https://www.mfaua.org/ru/projects/torhovlia-kradenym-chno-prodavala-rossyia-v-okkupyrovannom-krymu-v-2017-hodu>

# Another type of infringements (second sheet)

- The Vernovna Rada of the Autonomous Crimea Republic ammended the regulation of the year 2000: “On the property, belonging to the Autonomous Republic Crimea”. A list of changes have been made in this regulation.
- What can be said about this re-registration: generally spoken, someone who is expropriated has the right on a financial compensation for the amount of the value of the asset he lost.
- A person or entity who is of the opinion that he is expropriated can set up court proceeding claiming that his right on property has been infringed (art 1 of the first Protocol to the ECHR)

# Meanwhile in Brussels

- In Brussels, the Council does her work. The sanction regulations are well formulated. They are based on a huge experience (with other countries such as Egypt, Tunisia and Iran).
- The Council adds on regular basis new names and entities on the sanctions list
- 1 October 2020:
- The Council considers that four entities and two individuals should be added to the list of persons, entities and bodies subject to restrictive measures as set out in the Annex to Decision 2014/145/CFSP for their role in designing, building or using the railway infrastructure linking Russia and the illegally annexed Crimean peninsula.
- <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L.2020.318.01.0005.01.ENG&toc=OJ%3AL%3A2020%3A318%3ATOC>
- The sanctions, which now apply to a total of **177 individuals** and **48 entities**, include a **travel ban** and an **asset freeze**.



# Meanwhile in Luxembourg

- On a regular basis former president of Ukraine Victor Yanukovich and his associates are setting up annulment procedures at the Court of Justice in Luxemburg against the imposed sanctions (asset freezes).
- The Luxembourg court is only competent to rule about assumed infringements of Fundamental Rights, such as the right on property, the right to acces to the file and the right to be heard.
- These procedures are generally spoken lost. When Yanukovich or one of his allies wins a case, the court rules that the sanction decision at state will be annuled but the results (continuation of the asset freeze) will be maintained.
- The reason the procedures have no effect for claimants is the fact that the sanctions are prolonged every year and the issues raised upon a former decision are always solved when the court rules about that specifical case.

***4) how to close the loophole for these violations?***

***5) What the Ukrainian side can improve to facilitate the work of European law enforcement agencies.***

- Be present in Crimea to fixate any infringement.
- Check Chamber of Commerce registrations in Crimea of the suspected companies and providing the information to the relevant PO.
- Ask for evidence to the Ukrainian Prosecutor residing in Crimea
- Check local media and Google, Yandex search + Google and Yandex maps.

Questions or remarks?

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