



Dutch report on sanctions compliance: valuable insight, but a missed opportunity



On 13 May 2022, the Dutch National Coordinator for Sanctions Compliance and Enforcement handed over his much-anticipated report on the implementation of EU sanctions against Russia. The report includes a list of useful recommendations on a wide range of issues but is a missed opportunity to improve the sanctions regime, write Ellen Hompesch, Frederik van Til and Sebastiaan Bennink.

After the EU imposed sanctions against Russia in response to the invasion of Ukraine, the Dutch government was heavily criticised by the Dutch parliament about the pace and effectiveness of sanctions compliance and enforcement. In particular, the parliament strongly voiced its concerns about the relatively low value of assets that had been frozen in the Netherlands compared to other countries such as Belgium and France.¹ Minister of Foreign Affairs, Wopke Hoekstra acknowledged that the implementation and supervision of several sub-areas of the sanction package against Russia could be improved² and appointed Stef Blok as national coordinator to kickstart this effort.

To evaluate the implementation and enforcement of sanctions, Mr Blok, amongst others, assembled a data team to verify whether any assets or economic resources of sanctioned persons had flown under the radar. The national coordinator concluded that although the initial reporting of frozen assets took too long, there are no indications that assets and economic resources of sanctioned Russians have not been frozen.³ The total amount of frozen assets and blocked transactions to date (as at late May 2022) are set out in the table on the right.⁴

According to Mr Blok, the findings appear to be in accordance with the size and

structure of the Dutch economy. The national coordinator reports that this is reflected by the substantial amount of frozen assets in the financial sector and the vast number of checked freights and blocked financial transactions in the Netherlands. The total value of frozen assets and resources remains low compared to other countries as sanctioned persons are, for example, barely interested in the Dutch real estate market. Moreover, while a considerable number of Russian holdings are registered in the Netherlands, most of their assets are located outside of the Netherlands.⁵

The report is divided into actions taken on the short-term and actions recommended on



The Netherlands appointed former foreign minister Stef Blok as its National Coordinator for Sanctions Compliance and Enforcement.

THE TOTAL AMOUNT OF FROZEN ASSETS AND BLOCKED TRANSACTIONS (LATE MAY 2022)

Category	Result of compliance
Frozen financial assets	€640.8 million
Blocked financial transactions	€425.2 million
Vessels	24 vessels
Aircrafts	1 on ground, 5 'packed'
Freight	34,169 containers stopped and assessed 77,500 export declarations assessed 11,300 import declarations assessed 1,750 outgoing parcel posted items scanned
Real estate	No indication that real estate (insofar applicable) has not been frozen in compliance with the sanctions regime.

the long-term. Regarding the former category, the national coordinator reports that several ministerial decrees have been adopted to facilitate the exchange of data between relevant authorities. The implementation of EU sanctions was initially hampered as relevant authorities lacked the required legal basis to share relevant information amongst each other. In this regard, the national coordinator highlights that the Dutch government has also tabled proposals in Brussels to embed a stronger legal basis for the exchange of data in EU sanctions regulations.⁶

On the longer-term actions, the national coordinator makes several recommendations as to how to improve sanctions compliance. Pursuant to Art. 2 of Regulation 269/2014, all funds and economic resources *owned* or *controlled* by sanctioned persons, entities or bodies must be frozen.⁷ According to the national coordinator, it remains

THE REPORT DOES NOT SHED ANY LIGHT ON THE POTENTIAL ADDED VALUE OF INTRODUCING MEASURES TO STIMULATE VOLUNTARY SELF-DISCLOSURES OF SANCTIONS VIOLATIONS.

challenging to determine whether assets are ultimately owned or controlled by sanctioned persons and entities. Mr Blok advises that the Netherlands should continue to advocate for lowering the ownership threshold from 50% to 25% ownership. 'This will make it more difficult for persons and entities on the sanctions list to avoid sanctions while retaining control of a company', Mr Blok argues.⁸

The national coordinator also emphasises that it is currently unclear what due diligence measures companies are required to take in order to comply with EU sanctions regulations. While the European sanctions regulations do not contain any explicit rules on due diligence, the national coordinator nevertheless insists on creating a clear EU-wide framework detailing the scope of due diligence measures obliged to comply with EU sanctions. 'Further guidance at EU level is desired in this field', Mr Blok concludes.⁹

The report also advises broadening the range of companies subject to a legal obligation to report frozen funds and resources under national law. Currently, only certain designated financial institutions are legally obliged to report relationships with sanctioned persons and entities, including the freezing of assets and the blocking of transactions.¹⁰ The national coordinator therefore advises introducing a similar reporting obligation for notaries, lawyers and accountancy service providers, and to legally arrange appropriate supervision.¹¹

Whereas the report includes several valuable recommendations, it can also be considered a missed opportunity as several topics remain unexplored in the report. For example, the report does not shed any light on the potential added value of introducing measures to stimulate voluntary self-

THE RECOMMENDATIONS OF THE NATIONAL COORDINATOR FOR SANCTIONS COMPLIANCE AND ENFORCEMENT:¹³

National coordination and communication

1. Continue the coordination role in the enforcement of sanctions at the Ministry of Foreign Affairs by recruiting a project director or Director-General and having this person supported by a team. Ensure that this team is closely associated with the previously announced sanctions unit at the Ministry of Foreign Affairs that focuses on developing new sanctions and more effective EU sanctions policies.
2. Continue to work closely with all parties involved and with due observance of everyone's responsibilities, paying attention to sufficient capacity for implementation, supervision and enforcement.
3. Reinforce the help and information desk of the Netherlands Enterprise Agency ('RVO') for entrepreneurs and their interest groups and also ensure that RVO serves as a meeting point for questions from entrepreneurs and interest groups that must be put to Brussels.
4. Make sure that the sanctions system is strengthened, and the law and regulations keep up with it, without neglecting a due process. Stef Blok recommends that the cabinet sends a letter to the House of Representatives about this before the end of the year.

Duty to investigate, to report, and supervision

5. Create a reporting obligation for notaries, lawyers and accountancy service providers and ensure appropriate supervision.
6. Closely monitor the implementation of the (European) UBO register and its relevance for due diligence activities under EU and Dutch sanctions law in the coming period.
7. Create a hotline for freezing interests and shareholder rights owned by sanctioned persons.

Amendments to laws and regulations

8. Make sure that the duty of confidentiality of professions can be breached for the purpose of notifications under the EU sanctions regulations. If this does not seem promising or if it takes a long time, investigate

whether it can be done by amending national laws and regulations.

9. Arrange for the management of long-term frozen assets of companies so that it becomes clear what they can and cannot do with or without an exemption. Here too, the EU route is preferred, but national consideration must be given to what can be done if there is no EU clarity.
10. Create a stronger legal basis for data exchange, preferably by amending EU sanctions regulations and otherwise through national laws and regulations.
11. Create a legal basis for providing information about frozen assets and legal entities in the national Commercial Register.
12. Continue to submit text proposals to amend EU sanctions regulations, so that they provide a stronger foundation for the Dutch sanctions regulations.

Data exchange

13. Build on the exchange of data between the relevant authorities involved in the created data team. Faster, more efficient and easier exchange of data is necessary.

EU and international

14. Insist on clear frameworks for the due diligence obligations regarding ownership and control under the EU sanctions regulations.
15. Discuss with the European Commission whether a reporting desk for rental and leasing to sanctioned persons would have added value and consider to create a reporting desk.
16. Discuss in Brussels whether there is a need for a uniform European interpretation of the grounds for granting an exemption.
17. Advocate in Brussels that the central contact point for Russia sanctions should be consolidated.
18. Make proposals in the EU for improving the process of publishing sanctions, including with regard to the timing and form of submitting names.

disclosures of sanctions violations. Moreover, the report ignored the possibility of introducing a legal basis for directly designating entities on their own right in case they are owned or controlled by

sanctioned persons or entities. The Council could, for example, directly sanction steel company Severstal in case it is considered to be owned/controlled by sanctioned shareholder Alexei Mordashov.¹²

To conclude, there remains ample room for further improvements to the design of EU sanctions and further enhancement of compliance with and enforcement of restrictive measures.

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LINKS AND NOTES

- ¹ NRC (31 March 2022), 'Kamerdebat geschorst omdat minister Hoekstra geen antwoord kan geven op vragen over sanctiebeleid'.
- ² NL Times (1 April 2022), 'NL could do better in implementing, enforcing sanctions: Foreign Minister'.
- ³ Blok, S. (12 May 2022), 'Rapport van de Nationaal Coördinator Sanctienaleving en Handhaving', p. 7.
- ⁴ Blok, S. (12 May 2022), 'Kamerbrief bij aanbieding eindrapport sanctienaleving en handhaving', p. 2.
- ⁵ Blok, S. (12 May 2022), 'Rapport van de Nationaal Coördinator Sanctienaleving en Handhaving', p. 4.
- ⁶ Idem, p. 7.
- ⁷ Art. 2 of Council Regulation 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, as amended.
- ⁸ Blok, S. (12 May 2022), 'Rapport van de Nationaal Coördinator Sanctienaleving en Handhaving', p. 10 & 16.
- ⁹ Idem, p. 12.
- ¹⁰ Art. 3 of the Ministerial Decree Supervision Sanctions Act 1977 & Art. 10(2) of the Sanctions Act 1977.
- ¹¹ Blok, S. (12 May 2022), 'Rapport van de Nationaal Coördinator Sanctienaleving en Handhaving', p. 13.
- ¹² Alexei Mordashov is listed on Annex I of Council Regulation 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, as amended.
- ¹³ Blok, S. (12 May 2022), 'Rapport van de Nationaal Coördinator Sanctienaleving en Handhaving', p. 5-6.

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