

# **Report by the National Coordinator for Sanctions Compliance and Enforcement**

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## **1 The Coordinator's remit and the summary of findings**

### **1.1 Remit**

In response to the continuing Russian aggression in Ukraine, effective implementation of the sanctions policy is vital in order to hit the Russian elite hard. The government has therefore done everything possible to verify that nothing has been overlooked. Because of the many bodies involved in the implementation of the sanctions policy, action was required to enhance operational cooperation. To this end, Stef Blok was appointed temporary National Coordinator for Sanctions Compliance and Enforcement.

The National Coordinator's remit centred on compliance with and enforcement of the extensive and ever expanding package of sanctions adopted in response to Russia's aggression against Ukraine. This package is far larger and affects far more sectors of the economy than previous sanctions. As a consequence, more government ministries and institutions are involved than before. There is a real possibility that this sanctions package and any expansions thereof will remain in place for some time. And it cannot be ruled out that sanctions will be imposed on other countries in the future. Therefore, although the focus of the National Coordinator's remit was compliance with the sanctions against Russia, his work could also yield useful results that can be applied over the longer term and a wider area. Specifically, the National Coordinator was entrusted with the following tasks:

- Overcome bottlenecks in compliance with and enforcement of sanctions. Improve monitoring, supervision (including the notification requirement) and enforcement in areas where arrangements for this are not yet in place. Modify sanctions orders so as to assign powers more effectively.
- Monitor and communicate on progress on compliance with and enforcement of sanctions on the basis of the results achieved by ministries and institutions. Encourage additional measures where progress is still lacking.
- Ensure better coordination and exchange of information between the relevant ministries and institutions.
- Promote the active investigation in connection with and enforcement of the sanctions, especially those directed against the principal Russian natural and legal persons included on the sanctions lists.
- Chair the government-wide steering group on sanctions compliance and enforcement.
- Lead the sanctions taskforce on active investigation and enforcement in which relevant executive bodies participate, including the Public Prosecution Service and the Fiscal Information and Investigation Service (FIOD), and possibly other institutions such as De Nederlandsche Bank (the Dutch central bank; DNB), the Dutch Authority for the Financial Markets (AFM), the Land Registry, and the Chamber of Commerce.
- Take part in relevant international consultations relating to sanctions compliance and enforcement (at EU level or the Transatlantic Taskforce).

### **1.2 Methodology**

The National Coordinator's duties can be encapsulated in two workflows: short-term improvements and a long-term agenda. This report describes the National Coordinator's duties with reference to these two workflows. Initially the National Coordinator talked with bodies involved in sanctions compliance and market participants in order to gain a better sense of sanctions compliance, bottlenecks and areas for improvement (see the annexe for an overview of these discussions). He also assembled a data team drawn from a number of the bodies involved in order to gauge whether increased data sharing

would result in more asset freezes. Coordination between all the ministries and agencies is streamlined by means of a government-wide steering group at senior civil service level and a government-wide task force at operational level. A number of ministerial regulations were amended in order to enable data sharing and designate competent authorities where this had not already been done. Finally, the National Coordinator held a limited number of consultations with European and international partners.

### 1.3 Findings

A number of findings emerged from the National Coordinator's short-term actions. First of all, as explained in the letter to parliament of 21 April 2022, the degree of progress in compliance with sanctions can be explained in large measure by the structure of the Dutch economy.<sup>1</sup> The developments in brief are as follows: in the financial sector, a substantial volume of funds has been frozen and transactions have been blocked; considerable numbers of inbound and outbound containers are being inspected and where necessary detained for further investigation; a number of yachts, a large proportion of which are under construction, have been placed under heightened supervision and two vessels have been seized; a small number of aircraft have been grounded; and the Dutch real estate market is attracting little interest from Russians subject to sanctions. In addition, there are a considerable number of Russian holding companies that, while registered in the Netherlands, hold most if not all of their assets abroad, and Russian operating companies are active here. It often proves difficult to identify the ultimate beneficial owner (UBO), especially in the case of complex cross-border ownership structures. Not least because of the international component, these structures are very difficult to unravel for the national authorities responsible for sanctions compliance, supervision and enforcement. The UBO register is helpful, but is not yet complete. This problem arises not only in connection with sanctions compliance, but also more broadly.<sup>2</sup>

In addition, the apparently fragmented nature of the supervision of sanctions compliance can be explained in large measure by the sanctions legislation in force in the Netherlands. The Sanctions Act 1977 empowers the Minister of Foreign Affairs to lay down national rules by ministerial order – known as sanctions orders – for the purpose of compliance with EU sanctions regulations. The choice of a ministerial order as a means to lay down rules was a deliberate one by the legislature because it allows for a sanctions order to be adopted, amended or repealed quickly. A sanctions order is necessary in order to be able to respond quickly to the changing character of EU sanctions regulations, which is also quite relevant now with the successive sanctions packages we have been witnessing. The powers specified by a sanctions order are geared to the sanctions measures in the regulations and the current crisis situation in a given country: the situation in Ukraine, for example, is not the same as that in South Sudan.

The drafting of sanctions orders and the designation of supervisory authorities always takes place in agreement with the ministers concerned.<sup>3</sup> A sanctions order designates a minister as the competent authority for the implementation of EU sanctions regulations. The ministers concerned might include, for example, the Minister for Foreign Trade and Development Cooperation for export controls on strategic goods, the Minister of Finance for financial institutions and the Minister of Infrastructure and Water Management for aviation and shipping. In the Netherlands, therefore, there are different tiers of supervision of sanctions compliance. This is directly related to the allocation of powers

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<sup>1</sup> [Letter to parliament on the current situation concerning sanctions compliance and implementation](#)

<sup>2</sup> See the [letter to parliament on the current situation concerning the introduction of the register of ultimate beneficial owners](#) of 14 April 2022 and the report of the Committee on Conduit Companies of October 2021, annexe to Parliamentary Papers 25 087, no. 286.

<sup>3</sup> See section 1 at (c) in conjunction with section 2 (1) and section 10 (1) of the Sanctions Act 1977.

among various ministers and ministerial responsibility for their policy areas. The supervisory authorities falling under the responsibility of the various ministers, such as Customs (which falls within the Minister of Finance's remit), immediately started supervising compliance with EU sanctions regulations. They report directly to their own minister rather than to the Minister of Foreign Affairs.

In the case of asset freezes, many different bodies must compare the sanctions list with their own data. A data team has been formed to verify that nothing is missed, on the basis of the available information, when assets are frozen. This data team has collated information from different registers. In view of the strict privacy legislation applicable in the Netherlands, it is difficult to share data without a legal basis for doing so and a clearly defined objective. In order to enable data sharing for the purpose of the implementation of sanctions regulations, specific provisions have been included in the sanctions orders. Nevertheless, sharing data remains a challenge for the various bodies. Additional attention to this issue as part of the long-term agenda is therefore warranted.

This report reflects on the freezing of funds as consequence of the sanctions adopted. Given how closely intertwined the Russian and European economies are, freezing assets poses a greater challenge than when sanctions were imposed in the past, given that the wealth (or suspected wealth) of sanctioned persons or entities in Europe is greater than in previous cases. At the same time, the sanctions against Russia go much further than simply freezing funds. The other sanctions are often limited to a specific sector of the economy and have their own implementation issues.

Alongside short-term actions, the National Coordinator has drawn up a long-term agenda and has discussed it with the ministries and bodies concerned. The different parts of this agenda, data sharing, improvements in supervision and notification requirements, government-wide coordination and communication, legislation, and European and international aspects, are explained in more detail below. The long-term agenda will also demand attention after the departure of the National Coordinator. This report therefore recommends that an interministerial mechanism be put in place to ensure the coordination of sanctions compliance and enforcement.

#### 1.4 Recommendations

Based on these findings and the long-term agenda set out below, this report makes the following recommendations. The principle underlying these recommendations and the further elaboration of this report is that, in their implementation, efficiency and effectiveness must always be key considerations. Thus, the administrative burden on small businesses should not be made needlessly onerous and the costs of, and return on, any extra capacity should be subject to careful scrutiny.

##### *Government-wide coordination and communication*

1. Make sanctions compliance coordination by the Ministry of Foreign Affairs a permanent role by recruiting a project director or director-general, supported by a team of four to five FTEs. Align this team closely with the previously announced sanctions unit at the Ministry of Foreign Affairs, which focuses on the development of new sanctions and more effective EU sanctions policy.
2. Continue to work closely with all parties concerned, having regard for their respective responsibilities and with attention to sufficient implementation, supervisory and enforcement capacity.
3. Strengthen the helpdesk function performed by the Netherlands Enterprise Agency (RVO) in answering questions submitted by businesses and their interest groups and have RVO collect those questions that need to be put to Brussels.

4. Strengthen the sanctions system and ensure that legislation keeps pace with it, while ensuring the relevant procedures are properly observed. The National Coordinator recommends that the government send a letter to the House of Representatives outlining the main points in this regard before the end of the year.

*Investigation requirement, notification requirement, supervision*

5. Impose a notification requirement on notaries, lawyers and accountants and ensure appropriate supervision.
6. Over the coming period, closely monitor the implementation of the – European – UBO register for the investigation requirement under the sanction rules.
7. Create a central reporting point for freezing shareholdings and shareholder rights in legal persons held by sanctioned persons.

*Legislative changes*

8. Ensure that the duty of confidentiality imposed on certain professions can be overridden for the purpose of notifications under the EU sanctions regulation. If this seems unlikely to be feasible or takes a long time, examine whether the same outcome can be achieved by amending domestic legislation.
9. Devise rules for the management of companies' assets that have been frozen for a lengthy period so that is clear what they can and cannot do with or without an exemption. It would be preferable for this to be regulated by the EU, but if clarity from the EU is not forthcoming it will be necessary to see what can be done nationally.
10. Create a stronger legal basis for the sharing of data, preferably by amending the sanctions regulation and otherwise by means of domestic legislation.
11. Create a statutory basis for including a note in the commercial register concerning frozen assets of legal persons.
12. Continue to submit proposed textual amendments to EU sanctions regulations so that they provide a stronger basis for Dutch sanctions orders.

*Data sharing (data team)*

13. Continue to build on the sharing of data between the government organisations involved in the data team. Data needs to be shared more quickly, efficiently and easily to provide a clearer picture of possible linkages.

*EU and international*

14. Urge Brussels to issue clear parameters for the requirement to investigate ownership and control under the sanctions regulation.
15. Discuss with the European Commission whether a central point for reporting leasing to sanctioned persons has added value and, if so, establish one.
16. Also raise, in Brussels, the need for a uniform European interpretation of the grounds for granting exemptions.
17. Advocate in Brussels for the continuation of the role of central contact point for Russia sanctions.
18. Submit proposals to the EU on improving the process for publishing sanctions, including with regard to timing and the form in which names are given.

## 2 Short-term actions

### 2.1 Data sharing (data team)

Following his appointment, the national coordinator began to examine whether any matters had been overlooked at the various bodies concerned on the basis of the EU sanctions list. There are no indications of this. Searches in their own data files by certain bodies and the exchange of data between individual bodies yielded the expected hits. The national coordinator has found that there was a temporary reporting problem: initially it took too long to report on all the actions taken at the various bodies concerned with a view to freezing assets under the sanctions regulation. No evidence was found that might indicate that cases had been missed in the freezing of assets, but it should be noted that ownership or control can be difficult to ascertain in situations involving complex international ownership structures. In order to shed more light on this, it proved necessary first of all to initiate closer cooperation between various bodies in order to facilitate data sharing. To this end, a sanctions data team was set up, on which more than 20 government organisations are represented.

It is possible that anticipatory action may have been taken shortly before the announcement of the EU sanctions list or shortly thereafter. Various parties drew attention to the risk that actors who feared being listed could take last-minute measures to prevent their assets from being frozen. There is also the matter of the brief period between the publication of a sanctions list and the actual entry of asset freezes in the files of financial institutions and other service providers. It is conceivable that transactions could take place in that period. This issue is not, however, confined to the Netherlands.

A small group within the data team has started to set up national data-sharing network. Its participants to date are the Fiscal Information and Investigation Service's (FIOD) Anti Money Laundering Centre (AMLC), the Tax Administration, the Investment Assessment Office (BTI), which falls under the Ministry of Economic Affairs and Climate Policy, Customs, the Netherlands Financial Intelligence Unit (FIU-NL), the Land Registry, RVO, and legal persons supervision department of the Integrity and Screening Agency (Justis/TRACK). The network is intended to enable improved coordination and the structural and regular exchange of data between the participating organisations, as well as an integrated investigative methodology. The ensuing searches for legal persons and natural persons associated with sanctioned persons tend to be labour-intensive. They demand considerable time and capacity, and there is no guarantee that they will actually deliver results.

In order to uncover more potential ties with sanctioned persons, a central information layer is being created within the network. Within this layer, network partners exchange signals and if possible data about sanctioned persons and – potentially – associated natural and legal persons. These partners then use this input in their own data files for the purpose of further investigation. The results are then sent back to the information layer. In order to fully penetrate ownership structures, it is also necessary for the information layer to establish links to international bodies or data teams. A key requirement when setting up the information layer is that the sharing of information must take place in a secure environment, within legal parameters consistent with the statutory possibilities open to the partner(s) concerned.

### 2.2 Discussions with supervisory authorities and market participants

The national coordinator spoke with a wide cross-section of stakeholders in the field of sanctions compliance, including ministries, executive bodies and supervisory authorities,

as well as professional groups and market participants such as bankers, estate agents, notaries, lawyers, trusts, company service providers and accountants. These discussions were intended to shed light on the current situation with regard to sanctions compliance and identify short-term and longer-term bottlenecks and areas for improvement. They yielded the following findings:

- Executive authorities, supervisory authorities, enforcement agencies and market participants state that the sanctions list was processed in their alert systems as soon as it was released and that there is no reason to assume that there were subsequent large-scale withdrawals of funds.
- Data sharing between bodies involved in sanctions implementation and supervision can increase effectiveness.
- The volume of frozen funds and assets may be considered to be plausible on the basis of the discussions and the nature of the Dutch economy. While it is true that the Netherlands is a popular location for international trade, it does not offer a real estate market where an investor can, for example, buy or sell a billion euros' worth of assets without being noticed.
- There are limits to the ability of the Netherlands and Dutch parties to effectively implement EU sanctions policy, since many physical assets owned by companies that are legally established in the Netherlands are located outside the Netherlands.
- Legislation will need to be amended in due course to enable the effective supervision of the implementation of (future) sanctions policy. The sanctions are binding on everyone in the Netherlands, but not all sectors are covered by legislation regulating supervision. DNB and the AFM are designated authorities for the financial sector under the Sanctions Act. They receive notifications of frozen funds and supervise the operations of financial institutions. In other sectors, there are no statutory provisions governing this kind of supervision of compliance with the Sanctions Act.

### 2.3 Ministerial orders

Due to the extensive EU sanctions regulations adopted since Russia's invasion of Ukraine began,<sup>4</sup> the sanctions orders have been expanded in recent weeks to include more far-reaching national rules. This was done for the benefit of the executive agencies that have submitted questions and requests to the Minister of Foreign Affairs and other ministers. An example of such a provision is article 2a of the Territorial Integrity (Ukraine) Sanctions Order 2014 on the sharing of data between the registrar of the Land Registry and the Chamber of Commerce. In other provisions this is regulated for more parties.

Since these rules set down in the sanctions orders confer more far-reaching powers than customary hitherto, action has been taken along two tracks in recent weeks. First, the Netherlands has submitted proposals to the European Commission to amend the text of the EU sanctions regulations. If these proposals are adopted, they will provide a stronger basis for the more far-reaching powers conferred by the Dutch sanctions orders. Second, work has begun on drawing up an inventory of the tasks and powers that should, with a

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<sup>4</sup> Council Regulation (EC) No. 765/2006 concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine (OJ L 134), Council Regulation (EU) No. 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 78), and Council Regulation (EU) No. 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 229). Rather than adopting new regulations, the existing regulations are amended when new packages of sanctions are introduced.



view to the future, be regulated by a formal Act of parliament or order in council. The second track is discussed in more detail in section 3.3.

#### 2.4 Government-wide coordination and communication

The National Coordinator chairs a central government-wide steering group composed of senior civil servants which is meant to streamline compliance with sanctions and supervision. He is also directly involved in leading the sanctions taskforce to which all the ministries and bodies concerned have assigned a person at operational level to identify and eliminate bottlenecks as quickly as possible, and to identify and elaborate possible improvements in the area of organisation and regulation in the medium term. Besides the ministries, the central government-wide steering group and the taskforce also include representatives of the bodies involved in sanctions compliance, such as Customs, the Tax Administration, the AFM, DNB, RVO, the Chamber of Commerce, the Land Registry, the Human Environment and Transport Inspectorate (ILT), the FIOD.

Explaining the sanctions clearly to the public, business and persons concerned remains an important task for central government, so that they know about the consequences and if necessary what measures they must take if they come into direct contact with the sanctions.

The communication effort is focused on providing up-to-date information via two channels. In February RVO<sup>5</sup> made changes to its business helpdesk to enable it to answer businesspeople's questions effectively, but also to arrange warm referrals to the various executive bodies and other relevant organisations, and hold information meetings/webinars. Over 1,200 questions have already been answered via this channel, and over 300 businesspeople have participated in the webinars. Most questions received by the business helpdesk are very specific and only concern a particular industry or even company. RVO works closely with the Chamber of Commerce, Customs, industry associations and government ministries to answer these questions.

Existing information about the sanctions and their impact has been collected from the various ministries and executive bodies and made available to members of the public at a single location, the website [Rijksoverheid.nl](http://Rijksoverheid.nl).<sup>6</sup>

#### 2.5 EU and international

The European Commission plays a major role in devising sectoral sanctions. These sanctions are adopted in due course by the Council. The Netherlands has consistently drawn attention to the need to take workability into account when preparing sectoral sanctions. For example, there have been intensive consultations on export restrictions to ensure they are framed as clearly and hence feasibly as possible. Clear rules are essential to enable a rapid assessment of whether or not a certain cargo is subject to sanctions when inspecting, for instance, the large numbers of containers that pass daily through the port of Rotterdam. The Netherlands also draws attention to the need for harmonised implementation to safeguard a level playing field for businesses in the EU.

The Commission only has a minor role, however, in establishing individual sanctions against natural and legal persons, one component of which is the freezing of funds. Primacy in this regard lies with the member states and the High Representative, who may make proposals for the Council to adopt in due course.

The implementation and enforcement of sanctions are primarily national responsibilities. In the Council, horizontal policy discussions are conducted concerning the use and implementation of sanctions by the RELEX/Sanctions working party, in which representatives of national governments meet several times each year. The Commission

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<sup>5</sup> [Information \(in Dutch\) about Russia sanctions \(rvo.nl\)](https://www.rvo.nl/en/information-about-russia-sanctions)

<sup>6</sup> [Sanctions against Russia and Belarus | War in Ukraine | Rijksoverheid.nl \(in Dutch\)](https://www.rijksoverheid.nl/onderwerpen/sancties-geen-land-ukraine)

also fulfils a coordinating role, ensuring the uniform implementation of EU rules and promoting a level playing field. Recently the Commission set up a group of experts to discuss implementation questions. For the Netherlands, the Ministry of Finance and the Ministry of Foreign Affairs take part in the group.

Following the invasion of Ukraine, the Commission also established a 'seize and freeze' taskforce, which is exploring the extent to which the freezing of funds under national sanctions legislation can lead to seizure and confiscation under criminal law. In the light of this, the Ministry of Justice and Security is taking part in this taskforce on behalf of the Netherlands alongside the Ministry of Finance and the Ministry of Foreign Affairs.

In view of the broad range of industries affected by the unprecedented scale of the sanctions imposed on Russia, there are many implementation issues. The possibility of referring specific issues already existed, but it has now been centralised with a special contact point at the Commission. Contact with the Commission on these questions is intensive and varied. This has resulted in various guidance documents on particular questions.

The Netherlands also regularly contributes technical proposals to amend the sanctions regulations. Sometimes they are prompted by considerations relating to implementation, such as the possibility of data sharing by executive bodies or the overriding of certain professions' duty of confidentiality in connection with sanctions-related notifications. In other cases they are political in nature, advocating for example that the ownership threshold for sanctioned legal persons be reduced from 50% to 25%, which would significantly extend the scope of the EU sanctions.

Neighbouring countries were also studied to find out how they organised themselves. In Germany, implementing sanctions is complex because of the country's federal structure. On 16 March the federal government established a high-level taskforce on the implementation of EU sanctions, led jointly by the finance and economic affairs ministries. In France, the lead role is assumed by the Economic Affairs and Finance Ministry (specifically the *Trésor*, the Treasury). It is in charge of a taskforce set up in early March consisting of the *Trésor*, DGFIP and Tracfin, whose duties are comparable to those of the Ministry of Finance, Fiscal Information and Investigation Service and Customs in the Netherlands. This taskforce coordinates its efforts with the French foreign affairs, interior and justice ministries. Italy has a Financial Security Committee that falls under the Italian Ministry of Economic Affairs and whose members are drawn from 15 government bodies. In Belgium, the Treasury oversees compliance with and the administrative processing of financial sanctions. It also inventories Russian-owned real estate.

Finally, the Netherlands maintains close contact with partners outside the EU, such as the United States, the United Kingdom and Ukraine itself, about the implementation of the sanctions. The European Commission is also in contact with partners such as Japan and South Korea on the matter of export controls. The various partners involved share indications of possible breaches and discuss the potential presence of property belonging to listed natural and legal persons as well as bottlenecks and dilemmas in national sanctions compliance, supervision and enforcement.

### **3 Long-term agenda**

The unprecedented package of sanctions imposed on Russia has laid bare a number of issues that require improvement. Besides the short-term actions taken with a view to ensuring effective compliance with sanctions and appropriate supervision, the National Coordinator makes a number of longer-term recommendations. While these recommendations stem in the first instance from experience with the sanctions on Russia, they are applicable to compliance with sanctions and the supervision thereof in general.

#### **3.1 Data sharing (data team)**

The data team will continue to work together so that data can be exchanged effectively between various organisations for the purpose of sanctions compliance and supervision. First of all it is necessary that the data team build the desired information layer, as outlined in section 2.1. For example, the details of data sharing must be further elaborated, so there is clarity about what precisely is being shared. A distinction may be made in this regard between information about persons currently subject to sanctions and persons who may be sanctioned in the future. Each partner's role in the sharing of information (provider, recipient, processor) must be clear to them, as must be the legal basis for the sharing of information in that role.

The National Coordinator recommends strengthening the basis for data sharing between bodies involved in sanctions compliance. With this in mind, the Netherlands has requested the European Commission to strengthen the basis in the relevant regulations for the power to collect, process and disclose relevant personal and other data to other competent supervisory and enforcement authorities as well as to those in charge of registers in the member states and to the European Commission. The amendment of national legislation will also be examined further (see section 3.3 below). With a view to the sharing and processing of data via the information layer, it will be necessary to identify what administrative agreements containing additional safeguards and arrangements are required. In order to be able to penetrate complex ownership structures, alignment with international bodies and data teams is to be preferred.

To date, the parties involved in applying the sanctions regulation have transferred the sanctions list to their data files themselves. It is advisable to advocate for one central (technical) transfer of the EU sanctions list to a data file that all Dutch bodies can use. The National Coordinator recommends that the European Commission publish this file immediately when adopting new sanctions. There is also a need for a permanent liaison role between Brussels and the Netherlands for data-related matters to catalogue the wishes and observations of parties in the Netherlands and to work on issuing and distributing a prior warning in the event of new sanctions lists. This role could be assigned to the Ministry of Foreign Affairs.

The longer-term aim is to extend and consolidate the data-sharing network approach. An assessment must be carried out to determine how the information layer could also be opened to input from (private) parties that are not directly involved in the network approach. This relates to unusual circumstances and possible breaches of the Sanctions Act observed by parties such as banks, lawyers, notaries, accountants or supervisory authorities.

#### **3.2 Investigation requirement, notification requirement, supervision**

The sanctions regulation that deals with the freezing of funds<sup>7</sup> contains three sanctions standards: (i) an order to freeze all funds and economic resources of sanctioned natural or legal persons or parties associated with them,<sup>8</sup> (ii) a prohibition on making any funds or economic resources available to sanctioned natural or legal persons or parties associated with them<sup>9</sup> and (iii) a prohibition on circumventing i and ii.<sup>10</sup>

The sanctions regulation that deals with the freezing of funds does not lay down any specific rules on investigating whether a counterparty is 'associated' with a sanctioned natural or legal person ('know your customer' (KYC) procedures). The regulation does provide, however, that actions by market participants do not give rise to any liability on their part if they did not know, and had no reasonable cause to suspect, that their actions would infringe the sanctions standards. This provision therefore assumes there is a certain investigation requirement that market participants must satisfy. Furthermore, the investigation requirement stems from the criminalisation of certain acts pursuant to the Economic Offences Act. The accidental contravention of the sanctions regulation is a minor offence (*overtreding*), while deliberate contravention is a serious offence (*misdrif*). In its policy documents the European Commission assumes that market participants will perform appropriate due diligence.<sup>11</sup> In addition, assessing the beneficial ownership of a business counterpart forms part of the KYC requirement.<sup>12</sup>

However, the sanctions regulation that regulates the freezing of funds lacks clear parameters for the investigation requirement. It is consequently unclear to market participants that are not financial institutions<sup>13</sup> what is expected of them when performing KYC procedures. The National Coordinator therefore recommends urging Brussels to issue clear parameters for the investigation requirement under the sanctions regulation. What is clear, however, is that the KYC procedures under this sanctions regulation are broader in scope than the investigation requirements under the Money Laundering and Terrorist Financing (Prevention) Act (WWFT) because the concept of an 'associated' party is broader than that of an ultimate beneficial owner (UBO). The fact that a person qualifies as a UBO is an indication that an association exists with the UBO within the meaning of this sanctions regulation. Further guidance from the EU is therefore desirable.

Concerns emerged from discussions with market participants about a lack of clarity in the scope of the investigation requirement and the fact that there were still many missing entries in the UBO register. As the House of Representatives was recently informed, the deadline for existing legal entities to disclose UBOs for entry in the register recently expired and the register is currently still being compiled.<sup>14</sup> Moreover, the UBO register was intended and set up as a tool to determine the UBO and cannot be relied upon entirely for the purpose of a UBO investigation. It is not meant to replace the investigation of ultimate beneficial ownership by the institutions concerned. In addition,

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<sup>7</sup> Council Regulation (EU) No. 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 78).

<sup>8</sup> Article 2, paragraph 1 of the sanctions regulation.

<sup>9</sup> Article 2, paragraph 2 of the sanctions regulation.

<sup>10</sup> Article 9 of the sanctions regulation.

<sup>11</sup> Commission opinion of 19 June 2020 [on Article 2 of Council Regulation \(EU\) No. 269/2014](#).

<sup>12</sup> European Commission FAQs of 4 April 2022:

[https://ec.europa.eu/info/sites/default/files/business\\_economy\\_euro/banking\\_and\\_finance/documents/faqs-sanctions-russia-circumvention-due-diligence\\_en.pdf](https://ec.europa.eu/info/sites/default/files/business_economy_euro/banking_and_finance/documents/faqs-sanctions-russia-circumvention-due-diligence_en.pdf).

<sup>13</sup> 'Financial institution' as referred to in section 10, paragraph 2 of the Sanctions Act.

<sup>14</sup> [letter to parliament on the current situation with regard to the introduction of the register of ultimate beneficial ownership](#)

the UBO register has been designed with the WWFT in mind and so the WWFT definition of a UBO has been applied.

The National Coordinator therefore recommends carefully monitoring the practicability of the UBO register with a view to the investigation requirement laid down by the sanction rules in the coming period. The European interconnection system (Beneficial Ownership Registers Interconnection System; BORIS) that is intended to enable the searching of the various registers in the EU is not yet ready. Moreover, even once the system is ready, all member states will still have to join up to it. As a result, it is currently not possible to search for non-public information in other member states' UBO registers. This is a serious impediment to the fulfilment of the investigation requirement. Once most of the necessary entries have been included in the UBO register and BORIS is ready, the necessity and scope for making improvements and additions that would help those concerned fulfil the investigation requirement under the sanctions rules will have to be examined.

Certain financial institutions are subject to a more comprehensive KYC obligation under the Sanctions Act (Supervision) Order 1977 (RTSW). In the financial industry the requirement to notify the supervisory authorities – the AFM and DNB – of matches between clients and persons or entities on sanctions lists is explicit and widely known. Market participants in this industry such as banks, trusts and company service providers appear to prefer to err on the side of applying sanctions rules too strictly, leading to a certain degree of overcompliance, it would seem. Among professionals such as notaries, lawyers and accountants the picture is less clear. There are a number of circumstances which might explain this. For example, there is no national notification requirement for market participants outside the financial industry.<sup>15</sup> A notification requirement would be at odds with the duty of confidentiality that applies to lawyers and notaries and is also laid down in the organic statutes for these professions. Sanctions regulation no. 269/2014, as it is currently formulated, accords primacy to the duty of confidentiality.<sup>16</sup> In order to create a notification requirement and lend it greater weight vis-à-vis the duty of confidentiality, this regulation would have to be amended. The Netherlands has already submitted a request to the European Commission for a proposal to this end. If modifying the regulation seems unlikely to be feasible or takes a long time, the National Coordinator recommends examining whether the notification requirement can be created by amending domestic legislation.

A notification requirement also requires appropriate supervision. The Financial Supervision Office oversees the work of notaries, bailiffs and specific professions that are subject to the WWFT, such as accountants and accountancy service providers, while local deans are entrusted with the supervision of lawyers. But supervision of compliance by these professions with the sanctions rules (EU regulations, the Sanctions Act 1977 and ministerial orders) is not regulated. The National Coordinator recommends that the supervision of the recommended notification requirement for these professions be regulated centrally. As far as lawyers, notaries and accountants are concerned, this should be done by means of an Act of Parliament.

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<sup>15</sup> The sanctions regulation contains an implicit notification requirement in the form of a prohibition on acting in contravention of Article 8, paragraph 1 of the sanctions regulation, while the administrative notification requirement for financial institutions in article 3 of the RTSW is formulated as a clear rule.

<sup>16</sup> Article 8 of Regulation (EU) no. 269/2014 reads: *1. Without prejudice to the applicable rules concerning reporting, confidentiality and professional secrecy, natural and legal persons, entities and bodies shall: (a) supply immediately any information which would facilitate compliance with this Regulation [...] to the competent authority [...] (b) cooperate with the competent authority in any verification of such information. [...]*

It emerged from the discussions conducted by the National Coordinator that there was a perceived need for a central reporting point for the freezing of shares in legal persons where a sanctioned legal or natural person has been established – whether as a result of investigation or not – as a shareholder and/or UBO, and possibly for the renting, leasing out and management of commercial real estate. The National Coordinator recommends designating a competent authority and creating a central reporting point for freezing shareholdings and shareholder rights in legal persons held by sanctioned persons. This can also easily be made transparent by including a note in the commercial register concerning frozen assets of legal persons. This solution would be quick and straightforward to bring about, provided a statutory basis were created as recommended by the National Coordinator. He recommends seeking clarification from the European Commission as to the utility of a central reporting point for renting and leasing out and, depending on the response, establishing one.

Given that the sanctions could remain in place for a considerable time, there is an increasingly pressing need for clear rules on how the assets of sanctioned legal and natural persons that are frozen for an extended period should be managed. Companies whose assets have been frozen must have clarity on, for example, the permissibility of the continued payment of salaries and rent, purchasing, compliance with other statutory or contractual obligations, or the settlement of bankruptcy or liquidation proceedings. A European scheme of general applicability would be preferable in this regard to an approach requiring the constant assessment of individual applications for exemption. Another point to emerge from the National Coordinator's discussions and the experience of working with a sizeable package of sanctions in recent weeks is the need for a uniform European interpretation of the grounds for granting exemptions. The National Coordinator recommends raising this subject in Brussels.

### 3.3 Legislative changes

As mentioned above, the extensive EU sanctions regulations recently adopted, which contain far-reaching measures, created a need for new tasks and powers to strengthen supervision and enforcement of the regulations.<sup>17</sup> In the past few weeks these tasks and powers have been laid down in the sanctions orders against Russia and Belarus.<sup>18</sup> The sanctions are likely to remain in place for some time, and with a view to the future, changes are also needed to the statutory sanctions system, such as new tasks and powers to be laid down by Act of Parliament or order in council, clarifying and where necessary strengthening them for future crises. They might include, for example, the above-mentioned notification requirement to be imposed on professionals such as notaries, lawyers and accountants and on companies that identify a sanctioned entity among their shareholders, the renting, leasing out and management of real estate, and powers to stop vessels docking in Dutch ports. This list of examples is not exhaustive.

The amendment of legislation requires a thorough analysis of tasks and powers in the supervision of compliance with the Sanctions Act that are currently lacking, and careful coordination with the government bodies and private-sector institutions involved, the Council of State and the States General. The Sanctions Act 1977 will have to be modernised and supplemented. Some concepts contained in the Sanctions Act 1977 are outdated, such as postal and telegraph traffic.<sup>19</sup> Some sections of the Act are no longer used, such as sections 6 to 8, or could be strengthened, such as section 2. The Sanctions

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<sup>17</sup> See also section 2.3.

<sup>18</sup> The existing Territorial Integrity (Ukraine) Sanctions Order 2014 and the Belarus Sanctions Order 2006 have been amended accordingly.

<sup>19</sup> See section 3, subsection 1 of the Sanctions Act 1977. The terminology used in this subsection is based directly on Article 41 of the Charter of the United Nations.

Act 1977 is only enforced under criminal law, with the exception of financial institutions.<sup>20</sup> Enforcement under administrative law by means of administrative fines or orders subject to a penalty could be a valuable addition.

An emergency bill is not an appropriate way to amend legislation. Instead, sanctions orders are the most suitable instrument for regulating urgent matters. This is because, in the first place, an emergency bill can still take a few months before it is enacted. Another reason is that, while some powers are now proportionate in view of developments in Ukraine, they would not be so in every crisis situation. Furthermore, an emergency bill is not the most appropriate instrument because, even as the bill is being debated, EU sanctions regulations may be amended and create new supervisory and enforcement requirements. The sanctions system can be strengthened in the Netherlands and legislation will have to keep pace with it, but this should be done by means of a careful procedure. The National Coordinator recommends that the government send a letter to the House of Representatives outlining the main points in this regard before the end of the year.<sup>21</sup>

#### 3.4 Government-wide coordination and communication; contact point

The Minister of Foreign Affairs has a coordinating role under the Sanctions Act 1977 and adopts the sanctions orders in agreement with the minister concerned. The ministers responsible for the issues to which the sanctions relate also bear responsibility for their implementation and compliance. The criminal law enforcement of sanctions falls within the remit of the Public Prosecution Service, for which the Minister of Justice and Security has management responsibility.

Following the departure of the National Coordinator it is recommended that central government-wide coordination be continued. The government-wide steering group and the task force should therefore continue to convene regularly to resolve any bottlenecks in the short term, implement the long-term agenda and ensure that issues requiring attention and improvement are raised in Brussels. The National Coordinator recommends strengthening the coordinating role played by the Ministry of Foreign Affairs by appointing a project director supported by a team of four to five FTEs. This coordinating role must be performed with due regard for the competences of the various government ministries and bodies. The latter possess the expertise and experience that is needed to optimise sanctions compliance. Ensuring sufficient capacity – while not a question the National Coordinator was requested to address – should be mentioned in this connection. The number of exemption applications submitted to the Ministry of Finance is rising rapidly, DNB and the AFM have reallocated capacity from WWFT supervision to Sanctions Act supervision, sanctions compliance is making heavy demands on the capacity of Customs, and more work for the Public Prosecution Service and the FIOD is expected in due course. The longer sanctions last, and the more industries that are made subject to supervision, the more cases the new supervisory bodies are expected to identify that need to be followed up by the Public Prosecution Service and the FIOD.

Explaining the sanctions clearly to the public, business and other persons concerned will remain an important task for central government for quite some time. Effective cooperation with all executive bodies and other parties that have a role in this respect is essential if stakeholders are to receive accurate information. There is a consultative structure at central government level between ministries and executive agencies and regular consultations between public and private parties to further enhance the provision

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<sup>20</sup> See part 5, section 10, subsection 2 to section 10h inclusive of the Sanctions Act 1997.

<sup>21</sup> Under the coalition agreement 2021-2025, major bills are to be preceded by a framework letter ('Looking out for each other, looking ahead to the future', p. 5).

of information to entrepreneurs and other professional groups. RVO performs an important helpdesk function in answering the questions of businesses and their interest groups. The National Coordinator recommends strengthening that role and exploring whether RVO could collect questions from businesses and interest groups that must be raised in Brussels because they cannot be answered at national level. The observation made above concerning capacity applies equally here.

### 3.5 EU and international

A central point of contact for sanctions compliance, supervision and enforcement would also seem to be necessary at European level. The implementation of sanctions remains a national responsibility, but the European Commission's coordinating role is essential to ensure the uniform application of EU rules and promote a level playing field. The contact point for Russia sanctions at the Commission is a first concrete step. The National Coordinator recommends advocating in Brussels for the continuation of the role of central contact point for Russia sanctions. Moreover, in connection with the implementation of the port ban in particular, there is added value in the provision of information by the Commission to the implementing parties.

The letter to parliament of 22 April this year highlighted a potential weakness in the sanctions publication process. The entry of newly adopted sanctions in the registers and systems of government bodies and market participants is often a human task, since only a list of names is published. These names must then be entered in data files in order to be able to carry out a check. The National Coordinator therefore recommends urging the Commission and the Council, when publishing new sanctions, to immediately make available a data file that is compatible with the systems used by the parties involved in sanctions compliance. In this connection it would help the parties responsible for implementing sanctions if the names of any associated parties were immediately given alongside the names on the sanctions list, in order to facilitate investigation. The National Coordinator also recommends, where possible, giving parties involved in sanctions compliance an embargoed advance copy of proposed individual sanctions so that they do not need to wait until after publication to enter the names on the sanctions list in their systems. Finally, publication on Saturday should be avoided, since in these cases the details can often only be processed by bodies and market participants on the following Monday.

Besides procedural matters, there are also technical legal issues that can best be addressed at European level. The Netherlands, for example, should continue to call for the lowering of the ownership threshold from 50% to 25%. This would make it more difficult for persons and entities on the sanctions list to evade sanctions while retaining control in a company.

Various issues that bodies and market participants can run up against in the implementation and supervision of sanctions can be overcome at European level, as already mentioned in section 3 (b). For example, provision could be made in the sanctions regulations for overriding certain professions' duty of confidentiality. The sanctions regulations could also establish a basis for the sharing of data within collaborative arrangements such as the sanctions data team set up in the Netherlands. The management of assets that are frozen for an extended period, especially non-financial assets (such as commercial interests) and the storage of yachts, should be regulated at European level. The implementation of the UBO register should be carefully monitored at EU level. The National Coordinator recommends entering into a dialogue with the Commission and the other member states on all these points.

It has become clear in this process that the Commission, too, is wrestling with a large number of specific issues. Sometimes it takes a while for it to respond. The Commission therefore needs more capacity to be able to provide information promptly at European level.



Finally, broader international cooperation is needed in order to gain an insight into international ownership structures which are often purposefully complex and, due to the international dimension, are difficult to unravel for national actors responsible for sanctions compliance, supervision and enforcement. The scope of the task of tackling these complex structures extends beyond compliance with sanctions alone. An EU-wide approach is preferable, in order to shed light on the worldwide ownership structures that could, among other things, use tax havens outside the EU.

## **4 Closing remarks**

Concerns about the effectiveness of the application of sanctions against Russia were prompted by initially sketchy information from public authorities and a lack of clarity about the Russian wealth actually present in the Netherlands. In-depth analyses and a large number of interviews yielded a clear picture of sanctions compliance and enforcement. That picture is conveyed in letters to parliament and in this report. It did not correspond with what had been assumed but, nevertheless, short-term measures could be taken and recommendations made to reinforce the sanctions system.

I believe that these measures and recommendations will enable all those who are involved in sanctions compliance and enforcement, both inside and outside government, to continue their unremitting efforts unabated and with renewed strength.

I would like to thank everyone involved for the help and support they have offered me, especially the team at the Ministry of Foreign Affairs that assisted me.

Stef Blok, 11 May 2022

## 5 Annexe: list of discussions held

ABN AMRO
Board of the Royal Dutch Notarial Society, with the Ministry of the Interior and Kingdom Relations/Housing and Spatial Planning and the Ministry of Justice and Security
Houthoff
De Brauw
Netherlands Bar Association, with the Ministry of Justice and Security
EU High Level Freeze & Seize Meetings
Financial Supervision Office
Association of Trusts and Company Service Providers, with the Ministry of Finance
Sanctions compliance and enforcement steering group, Directors General
Sanctions compliance and enforcement steering group, Directors
Interministerial taskforce on sanctions compliance and enforcement
Data team
UK embassy
Ukrainian embassy
French government delegation
Dutch Banking Association, with the Ministry of Finance
Royal Netherlands Institute of Chartered Accountants, with the Ministry of Finance
Media briefing on sanctions compliance
Legislation and Legal Affairs Department, Ministry of Economic Affairs and Climate Policy
DNB, with the Ministry of Finance
iCOV
Cabinet committee on security and intelligence / Ukraine and most closely concerned ministers
Constitutional and Administrative Law Division, Ministry of Justice and Security
Financial Markets Division, Ministry of Finance
Chamber of Commerce
Confederation of Netherlands Industry and Employers
AFM, with the Ministry of Finance
Directorate-General for Enterprise and Innovation, Ministry of Economic Affairs and Climate Policy
RVO
Land Registry
CBRE, JLL, Cushman & Wakefield (international real estate services firms)
Permanent Representation of the Netherlands to the European Union