

# The Russia sanctions as a human rights instrument: Violations of export controls regarding war-critical goods to Russia

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24-10-2023



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## 1. Preface

Next year, it will be ten years since Russia first attacked Ukraine. The upcoming anniversary calls for an even stronger and more concerted effort to end the war of aggression.

Sanctions are a key front in the on-going war. The support Ukraine gets to fight for its freedom is important. But it is also important what Russia doesn't get, as its military industry and armed forces remain dependent on Western technology.

This report comes out of groundbreaking research of the Norwegian risk analysis company Corisk in collaboration with my colleagues from the Norwegian Helsinki Committee, and their experienced partners, the law firm Wikborg Rein and the European Consultancy Agency, Rud Pedersen.

The report shows that there is a lack of a consistent compliance culture in the sanction coalition, regarding export controls of war-relevant goods. It also suggests that the sanctions increasingly are having an effect, not least thanks to the efforts of the EU and the US.

I hope all stakeholders in the coalition states and business community will take note of the facts and recommendations presented here. Ukraine is paying the price for Russia's aggression and destruction of the international human rights protection system.

The Russia sanctions are at bottom a human rights instrument, intended to defend international law. It is about our security – and yours. That is why we should all support, enforce and comply with them.



*Preface by Oleksandra Matviichuk, Head of Center for Civil Liberties, awarded the Nobel Peace Prize in 2022*



## 2. Summary and recommendations<sup>1</sup>

### 2.1. Summary

In the past decade, a significant shift has occurred in the landscape of international human rights enforcement. Sanctions, once primarily seen as tools of economic or political leverage, are increasingly being recognized and utilized as instruments for protecting human rights. Yet the findings in this report suggest that there is a lack of consistency in compliance with the sanctions against Russia (also referred to as the "Russia sanctions") in Europe.

Our aim is to expose holes in the sanctions net, based on groundbreaking research that has already been presented by major European media outlets, such as *Der Spiegel*<sup>2</sup> and *Frankfurter Allgemeine Zeitung*<sup>3</sup>; to relate these findings to the implementation and enforcement of sanctions (especially across the community acquis and related jurisdictions); and to provide recommendations to stakeholders on how to strengthen sanctions legislation, enforcement, and compliance.



Figure 2: From *Der Spiegel* 19 May 2023 and *Frankfurter Allgemeine* 14 August 2023

1 This chapter is written by the Norwegian Helsinki Committee (Aage Borchgrevink) and Corisk (Erlend Bollman Bjørtvedt).

2 *Der Spiegel*, "Päckchen für Putin", 19 May 2023 (the investigation in the article won the German Journalist Prize, open class, in September 2023); Berit Lindeman and Aage Borchgrevink (NHC): "So kappen wir Putins neue Nachschublinien", 24 May 2023; "Muster, die den Westen alarmiert müssen", 26 May 2023.

3 *Frankfurter Allgemeine*, "Infineon-Chips in russischen Geschossen", 14 August 2023; "Deutsche Technik in russischen Raketen", 14 July 2023.





The report explores the emergence and significance of sanctions as a human rights instrument (chapter 2). We delve into the specific case of the Russia sanctions, that is, the export controls, providing updated data and macro trends, regarding their application and impact, including an estimate of the total Western exports of sanctioned goods, and an updated survey of the European exports of 17 groups of dual-use and other war-relevant goods (chapter 3).

Further, we will discuss the legal implications of sanctions violations (including circumvention) and the tools at the disposal of national authorities seeking to crack down on such violations, as well as enforcement records in practice (chapter 4). We will then look at the reputational and practical implications of sanctions violations for the business community, including investors (chapter 5).

In essence, the Russia sanctions are a human rights instrument aimed at ending an illegal war, which in turn has implications for all stakeholders in the so-called sanctions coalition: regulators, enforcement bodies and business communities. Violating or not enforcing sanctions could prolong the war, a cost in blood that Ukraine and its people would have to bear. Physical or legal persons who violate sanctions not only risk being liable under sanctions laws, but also becoming complicit in international crimes, with serious ethical, legal and reputational consequences. Moreover, if violations occur on a large scale, it could delegitimize sanctions as an institution, which would also be detrimental to international security and human rights.

The Russia sanctions are vast and complex. This report mainly focuses on export controls on war-relevant (mostly dual-use) goods imposed by members of the sanctions coalition against Russia, as these exports are a critical front in the ongoing war. Experts generally agree that the Russian war effort remains dependent on Western technology. Making the sanctions more effective, could therefore contribute to shortening the war.

Like many other researchers, we first present estimates of the total trade in sanctioned goods based on "excessive trade" with Russia's neighbors, and such estimates indicate that Western companies, including from Europe, North America, and Japan, exported goods worth 1-3 billion Euros per month to Russia via its neighbors.

However, we also provide a unique in-depth survey of the exact European exports of 17 groups of sanctioned commodities to Russia, amounting to almost 300 million Euros per month for this limited group of war-relevant goods, which we record both at commodity and European country level. As far as we know, there are no similar holistic surveys of trade in sanctioned goods available for policymakers, enforcement bodies, and business managers.

Our findings suggest a lack of consistent compliance across the coalition. The European Commission's most recent sanctions packages, related measures, such as diplomatic efforts, as well as increasing public attention, have had a visible impact. Exports of war-relevant goods are shrinking. However, by August 2023, the flow of sanctioned goods to Russia from the West remains substantial.

We also present in-depth analyses of sanctions violations (direct and indirect) from two states in the coalition, Norway and Finland, based on a data set of the almost 4,000 individual shipments of sanctioned goods produced in those states. This represents the total exports to Russia from the two Nordic states, excluding most of the goods sold to Russia via the four members of the Eurasian Economic Union (EEU). These case studies reveal some of the routes and tactics utilized to bring sanctioned goods to Russia.



Based on the data, we can compare the degrees of sanctions violations between Western countries and detect the most important holes in the sanctions net. The data confirm that Turkey and Kazakhstan are key gateways for the flow of sanctioned goods to Russia. More surprisingly, our findings reveal that large quantities of war-relevant goods also flow directly from Europe to Russia. A few Western countries display particularly large direct outflows of sanctioned goods, including Poland, Germany, and Lithuania, the latter shipping sanctioned goods partly via Belarus.

This stands in contrast to the United Kingdom, Nordic countries and countries in Southeast Europe, which generally appear to comply with sanctions. But even companies in these countries violate sanctions, with or without knowledge and intent (i.e. intentionally or inadvertently). There are markedly lower exports of the most war-relevant goods from Denmark, Austria, Hungary, Romania, Bulgaria, Greece, and Norway.<sup>4</sup>

The data paint a picture of a Russian adversary highly skilled at utilizing a plethora of markets, intermediaries and mechanisms to import the sanctioned and war-relevant goods and technologies needed to continue its war in Ukraine.

The legal basis for the sanctions against Russia goes back to 2014, Russia's illegal annexation of Crimea and the measures adopted in response by a number of democratic states, with Regulation 833/2014<sup>5</sup> as a key document for restrictions on export of goods to Russia, which is the key area of focus for this report. In addition to the EU and the US, the sanctions coalition also includes EU candidate states, the European Economic Area (EEA) and G7 states, as well as a number of other states including Switzerland, Taiwan, Singapore, Australia, and New Zealand. Important non-sanctioning states include Turkey, India, and China, among others.

After the full-scale attack on Ukraine in February 2022, unprecedented new restrictive measures were imposed on Russia by the EU. These have taken the form of 11 sanctions packages (so far). The export related restrictions on Russia have been implemented by way of amendments to Regulation 833/2014, targeting broad sectors of the Russian economy.<sup>6</sup> Similarly, sanctions against Belarus, Russia's closest ally, have been regularly strengthened, albeit not to the same degree. Significant differences remain between these two sanctions regimes, and Belarus is still a channel for the flow of certain sanctioned goods to Russia, including war-relevant commodities.

Article 2 of Regulation 833/2014 states that it is prohibited to "*sell, supply, transfer or export, directly or indirectly, goods and technology which might contribute to Russia's military and technological enhancement... to any natural or legal person, entity or body in Russia or for use in Russia.*" The ban against indirect dealings is closely linked to the prohibition against circumvention of sanctions. However, while circumvention is aimed at actions conducted "knowingly and intentionally" to circumvent the relevant provisions (e.g. a scheme to

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<sup>4</sup> Norway and Greece have been found, however, to engage in maritime services in the grey area that are not discussed in this report.

<sup>5</sup> Council Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine ("**Regulation 833/2014**").

<sup>6</sup> In addition, EU sanctions have been imposed in the Ukraine related EU regulations which include restrictive measures in response to the illegal annexation of Crimea and Sevastopol, restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, misappropriation of state funds of Ukraine, and restrictive measures in response to the illegal recognition, occupation or annexation by the Russian Federation of certain non-government controlled areas of Ukraine.



deliberately avoid the restrictions imposed by sanctions), the prohibition against indirect dealings with restricted goods and/or parties also targets *inadvertent* (negligent) breaches. This places an obligation of due diligence on companies to ensure that they do not inadvertently export goods to, or for use in, Russia.

It is worth noting that, in everyday parlance, the term 'circumvention' is frequently used interchangeably with 'indirect violation'. In the EU's draft proposal for a directive to harmonize penalties for the violation of sanctions (described in section 4.4 below), however, circumvention is distinguished from direct and indirect violations of sanctions. Specifically, circumvention is described as an act to conceal or provide inaccurate information about the status or ownership of a sanctioned person or asset.

The directive is still in draft form and the EU institutions themselves (in for example guidance documents (FAQs) and press releases) still frequently use the terms 'circumvention' and 'indirect violation' interchangeably. However, for the purposes of this report, we have used the term 'indirect violation' to refer to activities one might typically consider to be circumvention (within its everyday meaning), such as seeking to (indirectly) violate sanctions by exporting restricted goods to Russia via third countries. The term 'circumvention' is thus only used in the narrower sense just described.

While the EU establishes the legal sanctions framework, states are responsible for enforcing the sanctions at a national level. Across the member states of the EU, as well as Norway, the UK and the US, there are significant differences in the type and severity of penalties that can be imposed for different sanctions violations, as well as the extent to which individuals and corporations can be held criminally or administratively liable for such violations. In some states, violations of sanctions are solely a criminal offense or solely an administrative offense, while in others, violations can amount to either an administrative or a criminal offense.

The lack of information on enforcement (e.g., investigations, fines, warnings, verdicts), makes it hard to assess what types of penalties and levels of enforcement are most effective. A tentative conclusion, however, is that the UK's mixed system of penalties (including the relatively recent addition of a strict liability regime), combined with a transparent enforcement authority with increasingly aggressive rhetoric (the Office of Financial Sanctions Implementation, OFSI), may in part explain why there are relatively few sanctions violations by British companies.

It seems likely, too, based on information from enforcement authorities, that the more effective enforcement tools include negligence provisions (i.e. that natural and legal persons can be penalized for violating sanctions without intent or knowledge, if they *should* have known that their actions would result in a violation), and a form of corporate liability that can be imposed even where no identifiable individual (or individuals) may be held liable for the criminal act.

While enforcement remains relatively weak and inconsistent, there is a trend towards increasing enforcement action for sanctions violations. The trend is evident from statements made by authorities, as well as the number of pipeline cases currently under investigation. Companies involved in persistent and/or deliberate acts of direct and indirect sanctions violations, or companies generally failing to impose controls to prevent such violations, are thus exposed to a genuine risk of action being taken against them from enforcement authorities. Given that the sanctions are a human rights instrument aimed at ending an illegal war, violating



the export controls on war-relevant goods not only means violating sanctions laws. In certain grave cases, it could even lead to complicity in Russia's war crimes.

## 2.2. Recommendations to EU institutions and national governments

Based on the findings of this report, we believe that a key problem is a lack of a consistent compliance culture across the sanctions coalition, and in Europe generally. This should not be surprising, given the sweeping and unprecedented nature of the Russia sanctions, and the speed with which they have been introduced. There are a number of holes in the sanctions net that need to be plugged to curb Russia's violations of international law. These holes also have a direct adverse impact on businesses: companies that are compliant and refrain from illicit trade with Russia risk losing market share, to the benefit of competitors that violate sanctions rules via direct or indirect trade with Russian companies or otherwise in violation of applicable restrictions.

There is no silver bullet. All stakeholders must contribute. Many companies and investors do not seem to have adequate measures in place to analyze risks and conduct due diligence. There is a lack of awareness about the risks involved. This may be connected to enforcement authorities that do not always have the necessary experience, resources and legal tools to promote awareness and enforce compliance.

Export controls on war-relevant goods hurt Russia's military industry and war effort, but the side effect is pain for Western economies and companies. There is a constant risk of "sanction fatigue", something the Russian government hopes for and seeks to nurture. For this reason, equitable burden-sharing is a must. If there are varying degrees of enforcement and compliance between states and companies, the coalition may indeed experience cracks and fatigue. Harmonization of compliance is thus key, and the EU, UK and US play leading roles in this effort.

To mend the holes in the sanctions net, based on the findings of this report, we believe that EU legislative and executive bodies, as well as national authorities, should consider the following measures:

**Negligence provision.** In its work to ensure the uniform implementation of restrictive measures in all member states, the European Commission proposed a directive to harmonize criminal offenses and penalties in December 2022. The European Parliament<sup>7</sup> amended the proposal in July 2023, including by strengthening the draft directive to include a negligence provision (as opposed to the original proposal which required *serious* negligence). We believe it is critical that the EU criminalizes violations of restrictive measures (sanctions) when committed with negligence, i.e. that enforcement authorities can penalize or prosecute legal or natural persons who violate sanctions if they knew or *should have known* that their actions could result in a violation.

**Closing the Belarus gap.** While the Belarus sanctions have been strengthened and to some extent harmonized with the Russia sanctions, with the latest measures introduced in August 2023, there are still differences between the regimes. Our findings suggest that Belarus remains a channel for certain sanctioned war-relevant goods from the coalition to Russia.

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<sup>7</sup>The EP's Committee on Civil Liberties, Justice and Home Affairs (LIBE).





**Plugging the EU hole.** A large number of sanctioned war-relevant goods go directly to Russia from ports and airports in the EU. This is a systematic feature. Goods from EU providers are sold to companies or individuals from third countries, while the goods are still in the EU. They are then sold to Russian counterparts by the companies or individuals from the third countries and transported directly from EU territory to Russia. Customs authorities, especially in the countries close to Russia and countries with much maritime trade, need to step up enforcement.

**Removing the intermediaries from the equation.** There are a number of companies, also within the EU, that function as intermediaries for exports, yet appear not to face consequences even when they are repeat offenders. There are even examples of companies being sanctioned by the United States, but still continuing their illicit trade with Russia.<sup>8</sup><https://home.treasury.gov/news/press-releases/jy1494> (accessed 22.10.2023). Enforcement authorities should deal more quickly and decisively with such offenders, based on a regular and more systematic monitoring of customs data.

**Create incentives for business.** Companies applying for contracts as part of the internationally funded rebuilding of Ukraine, should be informed that only those companies that comply with sanctions are eligible to participate in the tenders. The EU should work with Ukrainian authorities to track and document violations and use sanctions violations as a criterion for exclusion from reconstruction contracts. This would make it even more clear to exporters that they need to conduct effective due diligence.

**Extend export licensing regimes for military, dual-use and other war-relevant goods.** Many war-relevant and dual-use goods enter Russia via third countries, not least through members of the Eurasian Economic Union. The EU should consider extending the current military and dual-use licensing regime to include a much larger group of war-relevant goods, including digital components. Such restrictions could decisively reduce Russia's access to some key technologies.

**Quota regimes for members of the Eurasian Economic Union and selected other states.** Sanctioned goods, whether they are war-relevant or not, flow to Russia via members of the Eurasian Economic Union, as well as from Turkey and the United Arab Emirates. A quota regime based on historical trade volumes in the years predating the full-scale invasion, would limit exports of selected goods to a quota derived from that baseline. Such quotas are already used for certain goods in the sanctions against Russia.

**Updating laws and tools.** Member states are tasked with enforcement, and some may need to revise their legislation. Enforcement authorities need training, resources, and better tools of investigation, including access to and training in the use of open sources.

**Increase transparency in enforcement.** Sanctions coalition members should publish information about fines imposed, investigations opened and enforcement decisions dealing with sanctions violations, to the extent possible without adversely impacting ongoing investigation efforts.

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<sup>8</sup> For instance, Elmec Trade in Estonia,



### 3. Sanctions as a human rights instrument<sup>9</sup>

#### 3.1. Defining sanctions: a brief overview

Sanctions are measures not involving the use of armed force that are employed by individual states or a collective grouping of states to coerce a particular state, entity or individual (or any combination of these) to conform to the imposing state's (or states') professed requirements (frequently on the basis of international laws or obligations). Under Chapter VII of the United Nations Charter, the UN Security Council (UNSC) has the authority to maintain or restore international peace and security. This includes the imposition of sanctions under Article 41, which provides for a broad range of enforcement options that do not involve the use of armed force. Since 1966, the Security Council has established 31 sanctions regimes targeting various countries and entities.

These Security Council sanctions have taken various forms and pursued a range of goals. The measures have included comprehensive economic and trade sanctions, as well as more targeted measures such as arms embargoes, travel bans, and financial or product restrictions to support peaceful transitions, deter non-constitutional changes, constrain terrorism, protect human rights, and promote non-proliferation.<sup>10</sup> <https://www.un.org/securitycouncil/sanctions/information> (accessed 22.10.2023). Similarly, sanctions imposed by the EU include arms embargoes, travel bans, freezing of assets and economic sanctions to protect EU values, security and fundamental interests, support the rule of law and human rights, and strengthen international security.<sup>11</sup> <https://www.consilium.europa.eu/en/policies/sanctions/> (accessed 22.10.2023).

Historically, sanctions have been used for a variety of purposes. While there have been instances where sanctions were imposed for human rights purposes, such as the sanctions against the apartheid regime in South Africa, more often they have been viewed as a political tool. An example of this is the longstanding US sanctions against Cuba, which were (and are) primarily driven by political considerations rather than human rights concerns.

Traditionally, sanctions were usually limited in time and space, targeting a specific state for a defined period. In contrast, new human rights sanctions regimes today are often global in scope and can be imposed indefinitely until certain conditions are met. Furthermore, modern sanctions often target not only states but also non-state actors, including individual officials, companies, and other entities, to deter and punish undesirable behavior such as human rights abuses or other illicit activities.

Unofficial sanctions, such as arbitrary trade bans, also play a role in the history of sanctions. These measures, while not formally imposed by an international body or formally described as sanctions, may nonetheless have significant economic and political impacts. Unofficial sanctions have been used with

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<sup>9</sup> This chapter is written by the Norwegian Helsinki Committee (Zekeriyya Yahya Kapinar and Aage Borchgrevink).

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increasing frequency in recent years, usually by powerful states. While these measures do not fall under the traditional definition of sanctions, they nonetheless serve a similar purpose.

For instance, China's ban on Norwegian salmon in 2010 was widely seen as a response to the awarding of the Nobel Peace Prize to Chinese dissident Liu Xiaobo. It led to a sharp decline in Norwegian salmon exports to China.<sup>12</sup> <https://www.independent.co.uk/news/world/europe/norway-s-salmon-rot-as-china-takes-revenge-for-dissident-s-nobel-prize-2366167.html> (accessed 22.10.2023). Similarly, Russia's ban on Moldovan and Georgian wine in 2006, ostensibly for health and safety reasons, was widely interpreted as a political move amid escalating tensions between the Russian government and the two former Soviet republics.<sup>13</sup> <http://news.bbc.co.uk/2/hi/europe/4860454.stm> (accessed 22.10.2023).

Over the years, sanctions have been subject to various criticisms. One common argument is that they are employed arbitrarily as a political tool. Critics argue that countries may selectively impose sanctions to advance their own geopolitical interests, rather than to uphold international law. While it is true that the implementation of sanctions can be influenced by political considerations, this does not negate their potential as a tool for promoting international norms. Sanctions can serve as a powerful signal to states and entities that their actions will not be tolerated by the international community. This is particularly true of sanctions imposed as a result of persistent and serious violations of universally accepted human rights norms and values.

Another argument against sanctions is that they are applied inconsistently across different contexts. Critics point out that some countries with poor records of international law compliance are not sanctioned due to their strategic importance. While consistency is indeed a challenge, it is important to note that the absence of sanctions does not necessarily imply tacit approval of international law violations. Other diplomatic tools, such as dialogue and engagement, may be used in conjunction with or instead of sanctions, depending on the situation. Moreover, the development of multilateral sanctions regimes, such as global human rights sanctions, can help to ensure a more consistent and coordinated international response to violations of international norms.

The third criticism is that sanctions can have adverse effects on the local populations of the targeted countries, potentially causing more harm than good. Indeed, a study assessing the effects of economic sanctions on Iranians' right to health, found that sanctions led to a deterioration of people's overall welfare and ability to access necessities of life such as nutritious food, healthcare, and medicine.<sup>14</sup> [https://www.ijhpm.com/article\\_3454.html](https://www.ijhpm.com/article_3454.html) (accessed 22.10.2023). Sanctions may have not only negative humanitarian consequences, but may also backfire politically in that they confer (internal) legitimacy on the governments and regimes they are intended to deter or punish, for instance by laying the groundwork for an "us versus them" narrative that can be proffered by the relevant regime to create internal unity against the "outside world".

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However, the overall picture is mixed.<sup>15</sup> <https://www.econstor.eu/bitstream/10419/156098/1/ile-wp-2016-2.pdf>, pg. 37-42 (accessed 22.10.2023). A study by Gutmann, Neuenkirch & Neumeier (2019) provides a comprehensive empirical analysis of the effects of economic sanctions, and it offers some interesting insights into the argument that sanctions in general have adverse effects on the local populations of the targeted countries. The study finds that economic sanctions do not necessarily lead to a deterioration of the humanitarian situation in the targeted country. In fact, they find no support for the adverse effects of sanctions on the economic situation, political and civil rights, or basic human rights. With respect to women's rights, their findings even indicate a positive relationship.

This study suggests that the impact of sanctions is more nuanced and complex than often portrayed, and that sanctions can, in fact, have a positive impact on local populations in targeted countries.<sup>16</sup> <https://www.econstor.eu/bitstream/10419/156098/1/ile-wp-2016-2.pdf> (accessed 22.10.2023). Indeed, when a country faces comprehensive sanctions by a largely united international community, it might also lead to increased international scrutiny and pressure to improve its human rights record.

Sanctions should therefore not be discarded as a tool for promoting international norms. But their mixed history underscores the need for careful design and implementation to minimize adverse humanitarian impacts, and to close loopholes that enable violation or circumvention. This could include measures such as humanitarian exemptions, targeted sanctions that focus on individuals and entities responsible for violations of international law, and the use of assessment tools to predict and mitigate the potential effects of sanctions, as well as tighter regulation and increased enforcement. To improve the use of targeted human rights sanctions or Magnitsky sanctions, which they are frequently referred to as, a criteria-based approach can be developed, reducing arbitrariness and politicization.<sup>17</sup> [https://www.nhc.no/content/uploads/2021/11/European-Magnitsky-Commission\\_2021\\_GES.pdf](https://www.nhc.no/content/uploads/2021/11/European-Magnitsky-Commission_2021_GES.pdf) (accessed 22.10.2023).

### 3.2. The impunity gap and Russia

In general, the international human rights protection systems in the UN and regional organizations, such as the Council of Europe, lack sufficient tools to hold states and individuals accountable for grave human rights violations and international crimes. This impunity gap is perhaps the most concerning human rights issue today.

Russia's increasing aggression, from the armed conflict in Chechnya in 1999, via the invasion of Georgia and the intervention in Syria, to Ukraine, is a case in point. There have been many crimes, but little punishment. The so-called Chechen cases from the European Court of Human Rights are a catalogue of grave abuses, including the systematic use of torture and enforced disappearances on a massive scale.<sup>18</sup> [https://www.srji.org/en/legal/cases/?cn\\_filter=&set\\_filter=y&SIZEN\\_1=20](https://www.srji.org/en/legal/cases/?cn_filter=&set_filter=y&SIZEN_1=20) (accessed 22.10.2023). While Russia has paid compensation in line with the Court's decisions, it has consistently failed to introduce

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<sup>15</sup> For an illustrative summary on how various academic studies arrived different results on the matter, see

<sup>16</sup>

<sup>17</sup> See

<sup>18</sup> For the list of cases, see



general measures aimed at preventing similar violations in the future.<sup>19</sup> <https://www.hrw.org/news/2009/03/20/update-european-court-human-rights-judgments-against-russia-regarding-cases-chechnya> (accessed 22.10.2023). This was a clear contravention of its obligations as a (then) member of the Council of Europe<sup>20</sup> <https://www.coe.int/en/web/portal/-/the-russian-federation-is-excluded-from-the-council-of-europe> (accessed 18.10.2023). and under its own domestic laws.

The international legal system operates on the assumption that states will act in good faith. However, when states fail to do so, the Security Council is the primary body that can impose sanctions. In Russia's case, its permanent position on the UNSC effectively shielded it from such international repercussions. This has led the EU, the US and a number of other states to impose sanctions unilaterally, bypassing UNSC resolutions. This type of unilateral action highlights the growing role of regional and national sanctions as tools for accountability.

The lack of a forceful political and legal response to violations of human rights in Chechnya may have emboldened Vladimir Putin. The Russian leadership appears to have concluded that armed conflict remains a useful way of consolidating and projecting power, in spite of the fundamental international norms prohibiting the use of force in the UN Charter and several other treaties and agreements that the Russian Federation has committed to. War can also be a way (or “political technology”, to use a phrase often employed by pro-Kremlin think tanks) of deflecting attention from domestic issues, such as extreme economic inequality, corruption and the erosion of rights and freedoms.

Russia further appears to have concluded that there is no need to respect basic humanitarian norms in armed conflict, even though it is a signatory to the Geneva Conventions and other international humanitarian law treaties. Russia was an original signatory to the Rome Statute, following the annexation of Crimea and military intervention in eastern Ukraine, Russia withdrew its signature in 2016, signaling that it did not consider itself subject to the jurisdiction of the International Criminal Court (ICC).

Unfortunately, and for a number of reasons, the sanctions imposed by Western states after 2014 did not deter Russia from launching its full-scale invasion of Ukraine in February 2022. The current war has plunged the world into a multi-layered security crisis, and underscores the need to address the impunity gap, which is a driver of armed conflict.

### 3.3. The rise of global human rights sanctions

Ironically, Russia inspired the first human rights-targeted sanctions regime. The Magnitsky Act, named after a whistleblower who exposed corruption and was killed in a Moscow prison, was passed by the US Congress in 2012. Since then, Magnitsky type sanctions regimes, targeting individuals and companies by freezing their assets and denying them visas, have been adopted in many jurisdictions across the world to counter impunity for human rights abuses, international crimes and grave corruption.

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20 Russia was expelled from the Council of Europe on 16 March 2022 as a result of its invasion of Ukraine:





While the original intention was to punish a group of Russian officials, the sanctions model has developed into a much wider and more permanent sanctions regime, sometimes referred to as global human rights sanctions. To a degree, the Magnitsky campaign has contributed to changing the use and function of sanctions as a tool. From being applied in specific circumstances directed at particular states and regimes in a given time frame, human rights sanctions are now emerging as a global tool in the struggle to close the impunity gap.

However, these sanctions have not been without criticism. Similar to arguments made against sanctions in general, skeptics argue that human rights sanctions can be used as political tools, applied inconsistently, and potentially harm local populations. Yet, these criticisms are challenged by evidence suggesting that such sanctions can serve as a powerful signal to human rights abusers, be applied in a consistent and coordinated manner, and do not necessarily lead to a deterioration of the human rights situation in the targeted country (especially considering these sanctions primarily target specific individuals and entities with a track record of human rights violations, thus largely avoiding the wider impact on uninvolved individuals that may result from country- or region-wide sanctions). In fact, historical examples such as the South African apartheid regime suggest that sanctions can lead to significant positive changes from a human rights perspective. To further enhance the effectiveness and consistency of these sanctions, there are proposals to establish a European, and potentially international, commission to promote criteria-based sanctions, aiming to standardize and improve the human rights sanctions regimes.<sup>21</sup> <https://www.nhc.no/en/establishing-a-european-magnitsky-commission/> (accessed 23.10.2023).

The US, Canada, and the UK have the most developed human rights sanctions regimes. The EU has also adopted a human rights sanctions regime, but with fewer designations (applications) to date.<sup>22</sup> <https://www.sanctionsmap.eu/#/main/details/50/lists?search=%7B%22value%22:%22%22,%22searchType%22:%7B%7D%7D> (accessed 22.10.2023). The sanctions are 'targeted', freezing assets, denying entry, and excluding designated individuals from financial services. The targets to date are mostly officials who have abused their position and committed serious human rights violations or who are involved in significant corruption. A recent example is the UK's imposition in July 2023 of sanctions in response to Russia's forced deportation of Ukrainian children.<sup>23</sup> <https://www.gov.uk/government/news/uk-announces-new-sanctions-in-response-to-russias-forced-deportation-of-ukrainian-children> (accessed 22.10.2023). The EU regime covers only human rights abuses, but a proposal to include significant corruption is pending.<sup>24</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.LI.2020.410.01.0013.01.ENG&toc=OJ%3AL%3A2020%3A410I%3ATOC> (accessed 22.10.2023). Norway's sanctions law differs from similar laws in other countries in that it refers to sanctions adopted by an international organization (*i.a.*, the UN or the EU) or sanctions that have broad international support. A reasonable interpretation of the law (cf. NHC's report on the law, which is based on the experienced law firm Wikborg Rein's analysis), is that the Norwegian government cannot impose human rights (Magnitsky) sanctions unilaterally, but only as part of a coalition of like-minded states or together with

21 See Norwegian Helsinki Committee, «Establishing a European Magnitsky Commission»,

22 A detailed list of individuals and entities that have been placed on the EU's human rights sanctions list since March 2021 can be seen here:

23 See UK Foreign, Commonwealth & Development Office press release, 17 July 2023:

24 See Article 1(1) of the Council Decision (CFSP) 2020/1999 of 7 December 2020 concerning restrictive measures against serious human rights violations and abuses



the EU or other international organizations. The mechanisms have improved with respect to safeguarding due process from political intervention and protecting the rights of individuals and (in some jurisdictions) companies placed on the list.

In general, Magnitsky sanctions are motivated by two main aims. The first aim is to change the behavior of the targeted persons, prevent further abuses, and signify to the victims that democratic countries recognize the wrongdoing against them. A second, connected, aim is that targeted sanctions can be a tool to fight impunity in cases where there is no justice domestically and limited possibilities for foreign countries to prosecute the acts in question under universal jurisdiction principles.

An additional, related idea is that the impunity gap also represents a security concern. Historically, authoritarian regimes have often used armed conflict to gain legitimacy and power. If committing serious international crimes and waging illegal wars have no consequences except political and financial dividends, the threshold for new armed conflicts is low. Behavior that is rewarded, and not punished, will usually be reinforced. Impunity drives armed conflicts, as aptly illustrated by Russia under Putin.

It is difficult to measure the impact of Magnitsky type sanctions but given the reactions against the Magnitsky campaign from authoritarian regimes, it seems likely that they are taken seriously by individuals and companies with business and assets in Western countries, and that they may have an adverse impact on the "business models", as it were, of many contemporary authoritarian states. In these states, elites often control most domestic assets and harvest the main cash flows, yet they prefer to invest their wealth in Western countries, which usually have independent courts, rule of law and safer business environments.

Global human rights sanctions are transformative in several ways. Firstly, they have contributed to making sanctions less politicized (at least from the perspective of those who recognize universal human rights norms). By focusing on human rights abuses and corruption, these sanctions move beyond the political disputes that often characterize traditional sanctions regimes. They establish a clear set of criteria for designation, based on universally recognized human rights norms and anti-corruption standards.

Secondly, although doubts remain about their coherent implementation across the world, these sanctions have a global reach. Unlike traditional sanctions, which are often limited to specific states or regions, global human rights sanctions can be applied to individuals and entities anywhere in the world. This global scope enhances their potential to deter human rights abuses and corruption and promotes a more uniform approach to accountability.

Finally, these sanctions are transformative in their permanence. While traditional sanctions are often imposed for a specific period, global human rights sanctions remain in place until the targeted individuals or entities have addressed the issues that led to their imposition. This permanence underscores the seriousness of the abuses being addressed and the sustained commitment to holding perpetrators accountable.

In conclusion, the rise of global human rights sanctions represents a significant evolution in the use of sanctions as a tool for promoting accountability and human rights. By making sanctions less politicized, more global, and more permanent, these measures are reshaping the sanctions landscape and offering a powerful new tool in the fight against impunity.



### 3.4. Russia sanctions as a human rights instrument

In the wake of Russia's annexation of Crimea and aggression in eastern Ukraine in 2014, the EU imposed wide-ranging sanctions on trade, financial services, the energy sector, as well as officials and companies connected to the Russian war effort in order to "weaken Russia's economic base, depriving it of critical technologies and markets and significantly curtailing its ability to wage war." After the full-fledged invasion on 24 February 2022, the EU has strengthened sanctions in eleven packages (so far) that are unprecedented in scope.<sup>25</sup> <https://www.consilium.europa.eu/en/policies/sanctions/restrictive-measures-against-russia-over-ukraine/history-restrictive-measures-against-russia-over-ukraine/> (accessed 22.10.2023). The US, the UK and a number of other states in the sanctions coalition of almost 40 states have also imposed sanctions on Russia.

The distinction between targeted sanctions, imposed to fight impunity and prevent individual wrongdoing, and the sanctions against broad sectors of the Russian economy (including energy and finance) with an aim to undermine Russia's ability to execute the war, is not always explained. The various sanctions serve different purposes, but the main aim is to weaken Russia's capacity to wage an illegal war (of aggression) against Ukraine, among other things characterized by blatant disregard for the laws of war.

The many violations of humanitarian law appear to be a feature of Russian warfare, as they are not stopped or punished by officials higher up the Russian chain of command. Rather they appear to be systematic and widespread, as if terror against civilians and non-combatants is part of the toolkit of the armed forces and security services active in the occupied areas. Starting in 2014, human rights groups have noted that the widespread and systematic nature of certain crimes, such as the persecution of Crimean Tatars and pro-Ukrainian individuals in occupied Crimea, may have amounted to crimes against humanity.

The current wave of crimes has reinforced the argument that some of the gravest international crimes are unfolding in Ukraine. The UN Commission of Inquiry on Ukraine has concluded that war crimes and allegedly crimes against humanity has taken place, but the more investigation is needed to conclude on the second crime.<sup>26</sup> [https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/coiukraine/A\\_HRC\\_52\\_62\\_AUV\\_EN.pdf](https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/coiukraine/A_HRC_52_62_AUV_EN.pdf) (accessed 07.09.2023). The widespread and systematic nature of crimes coupled with statements by Russian leaders, such as President Vladimir Putin, that seem to deny the existence of a separate Ukrainian nationality and sovereignty, have led some observers to ask whether the war may have a genocidal trait, i.e. that the war is intended to partly or wholly, destroy the Ukrainians as a distinct national and political community.<sup>27</sup> <https://www.swissinfo.ch/eng/politics/irwin-cotler---russia-is-in-standing-breach-of-the-genocide-convention-/48228836> (accessed 22.10.2023).

The recent arrest warrants issued by the International Criminal Court against President Vladimir Putin and Russia's Federal Commissioner for Children, for the forcible transfer of populations (children) indicate a willingness by the Court to target the top leadership for war crimes. The statement by the ICC Prosecutor,

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25 The timeline of EU sanctions against Russia can be seen through this link:

26 Report of the Independent International Commission of Inquiry on Ukraine, 15 March 2023:

27 For example, see



Karim Khan, refers to the crime of aggression as the context of these crimes.<sup>28</sup> <https://www.icc-cpi.int/news/statement-prosecutor-karim-khan-kc-issuance-arrest-warrants-against-president-vladimir-putin> (accessed 22.10.2023). Mr. Khan stated that “We also underlined in our application that most acts in this pattern of deportations were carried out in the context of the acts of aggression committed by Russian military forces against the sovereignty and territorial integrity of Ukraine which began in 2014.” International efforts to establish a special tribunal to prosecute this crime are ongoing as the ICC does not have jurisdiction for this crime in Ukraine.

The Russian invasion of Ukraine is thus connected to some of the darkest chapters in European recent history and characterized by violations of international law. The sanctions against Russia clearly serve a human rights purpose in that they are an attempt to stop the illegal war and the crimes currently being committed in Ukraine. In this respect, some of the export controls, such as bans on dual-use and other goods critical for the Russian armed forces and military industry, are particularly important.

To conclude, the sanctions against Russia illustrate how sanctions are emerging as an international human rights instrument. The various forms of restrictive and punitive measures against the state, companies, and individuals are united by a human rights purpose. These measures, ranging from targeted sanctions against individuals to broad economic sanctions against sectors of the Russian economy, are all aimed at curbing Russia's capacity to wage an illegal war and commit human rights abuses. They represent a concerted international effort to hold Russia accountable for its actions and to deter further violations.

This use of sanctions as a tool to further respect for human rights and accountability marks a significant evolution in the international community's approach to dealing with states that violate international norms and laws.<sup>29</sup> While enforcement, notably to prevent and deter violations and circumvention, is still lagging behind, as we shall see in the subsequent chapters, this development has consequences for all stakeholders. For companies at risk of violating sanctions, the stakes are high. Not only do they risk being investigated or fined for violating sanctions laws, in grave cases, they could become complicit in international crimes, and risk criminal prosecution as well as civil complaints (as described more fully in chapter 4). There are also substantial reputational and commercial risks, as described in chapter 5.

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<sup>28</sup> Full statement can be found here:

<sup>29</sup> It should be noted that some previous sanctions also had a human rights purpose, as was the case with the sanctions against apartheid regime in South Africa.



## 4. Investigation into sanctions violations<sup>30</sup>

### 4.1. Introduction

Sanctions are intended to punish those who violate human rights and international law. European Commission President, Ursula von der Leyen, expressed the seriousness of the EU in this respect in February 2022, by stating that sanctions were intended “to cripple Russia’s economy”.<sup>31</sup> [Von der Leyen condemns 'barbaric' invasion of Ukraine, vows to cripple Russia's economy](#), 24 February 2022 (accessed 22.10.2023). The G7 countries and the EU early on took measures to co-ordinate sanctions among them, eventually also bringing Australia, New Zealand, Taiwan, Singapore, Switzerland, and most of Europe’s non-EU members into the sanctions coalition.

Early financial sanctions against the Russian central bank, targeting transfers in US dollars and SWIFT transaction mediations, all severely hit the Russian economy, its currency reserve and its ability to operate external transactions.<sup>32</sup> Sanctions on individuals have further reduced the Kremlin’s ability to distribute spoils to oligarchs and reward loyalists, an important ingredient in the country’s informal economic system.<sup>33</sup> Sanctions restricting the provision of services and goods to Russia have been more variably effective. This chapter investigates sanctions on trade in goods, focusing on Western exports of war-relevant (in some cases war-critical) goods and technologies to Russia.

In this chapter, we thus present selected research and investigations into violations of Western sanctions. Sanctions against Russia were first enacted in 2014 but were multiplied and extended to new sanctioning countries in 2022 and 2023. Export controls are intended to deprive Russia of key technologies and reduce its warfare ability. Controls include specific dual-use regulations, and the banning of exports of some 3,400 groups of goods, out of a total of approximately 15,000 groups of goods.<sup>34</sup>

In addition, there are import bans to curtail Russian (export) revenues, which are not the focus of this report. Bans on imports from Russia include many technologies, coal and petroleum products, and wooden articles, among others. Our analysis of Western trade is calibrated against the time of specific EU sanctions entering into force. EU and US sanctions have not been totally synchronous, for example the US Government had banned trade in petroleum products and digital components already by March 2022, whereas the European Union banned these commodities successively through the winter of 2022-2023.

Large Western exporters of goods to Russia *prior* to Russia’s current attack on Ukraine included, first of all, Germany, the United States, Poland, Japan, Korea, France, Italy, UK, Netherlands, the Baltic states and

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30 This chapter is written by Corisk (Erledn Bollman Bjørtvedt).

31 Euronews:

32 Maximilian Hess: *Economic War – Ukraine and the global conflict between Russia and the West*, Hurst, London, 2023, pp 143 ff.

33 Aage Storm Borchgrevink, *Krigsherren I Kreml – Putin og hans tid*, Kagge Forlag, Oslo, 2022. Maximilian Hess: *Economic War – Ukraine and the global conflict between Russia and the West*, Hurst, London, 2023, pp 45, 146-148.

34 According to the global *Harmonised System (HS)* classification, adopted as the *Combined Nomenclature (CN)* across the European Union. Russian and EU classifications follow the same groups with only minor deviations.





Finland. These countries' export bans make considerable inroads into some of the countries' exports, and concerted action with equally strict enforcement is vital to secure a level playing field with fair competition. Sanctions violations create an unfair playing field, by letting law-abiding companies bear the burden and cost of forgone business while less ethical competitors win market shares in Russia (and possibly in third countries exporting to Russia) by way of illicit exports.<sup>35</sup> [Measures to Increase The Effectiveness of Sanctions](#), The International Working Group on Russian Sanctions, Stanford University, 22 November 2022 (accessed 22.10.2023).

Yet another group of companies is those whose goods end up in Russia without their will and knowledge. This last group of involuntary sanctions violators is a specific target group for this report, as there is a clear need for higher awareness of the risks they face and environment they operate in.

As we will document below, some countries have tended to uphold their pre-invasion exports to Russia, including trade in sanctioned goods. Evidence indicates widespread and pervasive violations of sanctions, including indirect violations via third countries. This is ethically and legally unjustifiable behavior that may have severe consequences for Western companies, as described in detail in chapters 4 and 5.

During 2022, analysts started to investigate whether trade in sanctioned goods had actually stopped, or whether it continued via less visible channels. At the approval of each package of sanctions, the EU Commission estimated how much trade was expected to be reduced by each new round of measures, given the historic level of trade in the relevant commodities. However experience from other sanctions regimes gave reason for concern: sanctions are sometimes directly violated, but more often indirectly violated via trade with or operations in third countries. While governments routinely monitored *direct* trade with Russia, a handful of experts started to analyze Western *indirect* trade with third countries, especially after substantial sanctions entered into force from 10 July 2022.<sup>36</sup> [The countries of Central Asia and other member states of the Eurasian Economic Union \(EAEU\) and the Commonwealth of Independent States \(CIS\) as a tool to circumvent sanctions against the Russian Federation, its legal entities and individuals](#), Freedom for Eurasia, January 2023. Vaidotas Zemlys-Balevicius: [On EU trade with Russia and its neighbours after Russian invasion of Ukraine](#), Github, 25 January 2023. Erlend B Bjørtvedt: [Western sanctions circumventions and supplies to the Russian war effort](#), Corisk Report Series No 4, 3 February 2023 (all accessed 22.10.2023).

In early 2023, experts at the Bank of Finland and the European Bank for Reconstruction and Development (EBRD) published research on country-level trade with third countries.<sup>37</sup> [The Eurasian roundabout - Trade flows into Russia through the Caucasus and Central Asia](#), EBRD Working Paper No 276, February 2023 (accessed 22.10.2023). The *McFaul-Yermak Group* of researchers from Yale, Stanford and the Kyiv School of Economics at an early stage proposed sanctions regulations and explored the effects of sanctions including the extent of violations.<sup>38</sup> [Yermak-McFaul Group](#), project website including list of publications (accessed 22.10.2023). In November 2022, the group drew up a research and regulatory agenda including offender lists and a watchlist of high-risk companies and individuals in third countries, with improved information-sharing

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35 McFaul-Yermak Group:

36 Leila Nazgul Seitbek et al:

37 Maxim Chupilkin, Beata Javorcik Alexander Plekhanov:

38 Kyiv School of Economics:



and enforcement efforts.<sup>39</sup> [Measures to Increase The Effectiveness of Sanctions](#), The International Working Group on Russian Sanctions, Stanford University, 22 November 2022, p 3 (accessed 22.10.2023).

The partners behind this report have addressed some of the same issues and have appealed to European authorities to close loopholes and address target third countries since early February 2023.

In this chapter, we analyze Western and European exports that are directly linked to Russia's war effort, and thus its human rights violations. Estimates of exports to Russia are useful to any analysis of the effects of sanctions, including major changes which have included new groups of goods (July 2022, March 2023), the transit ban for dual-use goods in the EU's 10<sup>th</sup> sanctions package (March 2023), and enhanced monitoring measures on trade with third countries in the 11<sup>th</sup> package (June 2023).<sup>40</sup> [Regulation No 833/2014](#) contains the key prevailing EU sanctions at any given time, where the regulation is continuously being updated through EU Council Regulations or "packages". The document itself is physically updated with a certain time lag, some days or weeks after the Council approval of the latest changes.

Towards the end of the chapter, we will present some of the ways that sanctioned Western goods are traded with Russia, to warn businesses of some of the key pitfalls in trade and inform governments of some of the major loopholes in the sanctions regimes. We bring specific, real-world examples of how the trade unfolds and how Western exporters become entangled in these violations.

## 4.2. Methodology

For trade in sanctioned commodities, analysts can apply two different data sets and methodologies. To estimate [indirect trade](#), analysts record relatively coarse national trade data on the total trade with neighbors and apply a *top-down* method where excessive or 'abnormal' total trade volumes that cannot be naturally explained must involve Russia. Excessive exports are measured against a baseline of "normal" exports over the preceding 3-5 years. Months with negative values where exports to Russia were below the baseline level, must be removed.<sup>41</sup>

Excessiveness must allow for some growth in the trade according to economic growth in the importing countries and inflation in the Western exporting countries. The analyst must ensure that the spike in Western trade with the neighbor wasn't simply replacing a corresponding decline in the country's trade with non-Western countries. For example, a sudden, significant increase in the *total* imports of one of Russia's neighbors, where the *Western* part of that abnormal increase can be strongly assumed to end up in Russia.

This works well for Russia's closest ex-Soviet neighbors, while for Turkey or the UAE the spike in Western exports also conceal some goods destined for other conflict zones in the Middle East and must be calibrated against the change in these countries' total exports to Russia.

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39 McFaul-Yermak Group:

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41 One may expect this to produce skewed results if low exports in one month only mask delays in the exports until the next month, but the vast number of goods involved makes this unlikely, and in most cases negative numbers only occur because the monthly exports subject to sanctions are slightly below the baseline average.



To estimate actual, direct trade in sanctioned goods, analysts can apply customs data at detailed commodity level and simply sum up the trade volumes *bottom-up* at face value. Since there are about 3,400 sanctioned export commodity groups, and a comparable number of groups subject to import bans, it is too time-consuming to retrieve time series of trade in *all* sanctioned goods. Data from *UN ComTrade* only include trade at 4-digit HS classification level, whereas many sanctions are defined at the deeper 6- or 8-digit levels. Without options to mass-download data of this granularity, analysts are left with time-consuming retrieval of data, group- and country-wise, which helps explain why there are no available surveys of the *total* trade in sanctioned goods with Russia.

Detailed customs data are commercially available for Russia, Kazakhstan and Uzbekistan, but not for Western countries. Contrary to expectation, Russian and Kazakh customs import data are probably of high quality and completeness, since these data form the basis for the states' import controls and duty revenues.<sup>42</sup> Below, we present estimates of trade in sanctioned goods according to both methodologies.

First, we make a *top-down* estimation of the extent of Western exports of sanctioned goods to Russia via neighbors, by exploring national trade data and finding the excessive Western exports via Russia's neighbors that must be strongly assumed to end up in Russia (Figures 1-3). This estimation only runs up to May 2023, due to the delayed release of statistics from certain countries. A detailed macro-economic study of all the countries involved led us to allow for a flat 'natural' growth of 20 % for all ex-Soviet states, with the residual increases above that regarded as 'excessive'.<sup>43</sup> [Extent of Western sanction circumventions and supplies to the Russian war effort in 2022](#), Corisk Report Series No 6, 22 May 2023 (accessed 22.10.2023). For Kazakhstan and Georgia, we have checked that total imports increased, and the Western excessive exports were not simply replacing non-Western supplies.

For Turkey, we have calibrated excessive Western exports against Turkish exports to Russia, which implied a reduction in the estimate for Western indirect trade by 45 percent compared to the total excessive Western exports to Turkey (the rest of the excessive Western exports then having flowed to other conflict areas and sanctioned countries in the Middle East). For Russia's ex-Soviet neighbors, excessive Western exports are likely to end up in Russia and not elsewhere, due to their trade links and location far from other sanctioned countries and conflicts.

Second, we make a *bottom-up* estimation of the extent of European exports of 17 groups of war-relevant, sanctioned goods to Russia (Figures 4-8). From Russian customs data we account the exact Western exports directly to Russia and via third countries, as they appear in the Russian imports database. The data include a considerable amount of Western exports via Belarus, but not the indirect exports via two other EEU member states – Kazakhstan and Armenia.

Western exports to Kazakhstan are available in Kazakh customs data, and we have added all Western excessive exports of the 17 sanctioned groups of goods to the previously recorded Russian data to get the full picture. Only 4.8 million USD worth of Western exports via Kazakhstan were also accounted for in the Russian data in 2023, and this amount of double accounting is so small that we have found it unnecessary to

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42 Conversations with experts of a national customs authority in Northern Europe in 2023, confirm this view.

43 Erlend B Bjørtvedt:



search for those trades and exclude them from the data. Customs data for Armenia do not exist, so our total data will slightly under-estimate European indirect export of the 17 groups of goods.

With these caveats accounted for, we present below our best estimates of total Western direct and indirect exports to Russia, including estimated breakdowns to country level. Further, we will present actual European exports of 17 groups of sanctioned goods to Russia, according to the countries which these goods departed from as they entered Russia.

### 4.3. Western total exports to Russia and via third countries

Estimates of Western direct and indirect trade with Russia below follow methodologies described in detail by Corisk in May 2023.<sup>44</sup> [Extent of Western sanction circumventions and supplies to the Russian war effort in 2022](#), Corisk Report Series No 6, 22 May 2023 (accessed 22.10.2023). The estimates are based on official trade data – *UN ComTrade* data for Western trade with Turkey and Turkish trade with Russia, and national data for other bilateral trade relations. Due to late reporting by some EU member states, we only include direct and indirect exports to Russia up to and including May 2023.

In **Figure 1**, we combine and illustrate two different trade flows. The green colored area represents monthly, direct exports to Russia from 21 Western countries, starting in January 2019 and ending in May 2023.<sup>45</sup> The blue colored area represents monthly, excessive (abnormal) Western exports to eight of Russia's ex-Soviet neighbors and Turkey, beyond a 20 % annual growth rate.<sup>46</sup> For Turkey, such excessive Western exports were higher than the total Turkish exports to Russia, reflecting that Turkey presumably channels shadow trade to several other conflict areas such as Iran, Iraq, Syria, Lebanon, or Libya. Therefore, we only include the excessive share of Turkey's exports to Russia and assume this to represent shadow trade in Western goods. This assumption is to a considerable extent supported by random checks of micro customs data. The ex-Soviet republics that border Afghanistan count almost zero in our estimate, so it is highly unlikely that any residual shadow trade with the Taliban regime there will impact our results to any substantial degree.

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44 Erlend B Bjørtvedt:

45 The 21 Western countries in the data are: USA, Canada, Japan, United Kingdom, France, Germany, Netherlands, Belgium, Spain, Italy, Austria, Poland, Czechia, Hungary, Lithuania, Latvia, Estonia, Finland, Sweden, Denmark, and Norway.

46 Several macro and micro data studies confirm that shadow exports to Russia via Azerbaijan, Moldova and Mongolia is of a very low magnitude, and these trade data have therefore not been included in the study.

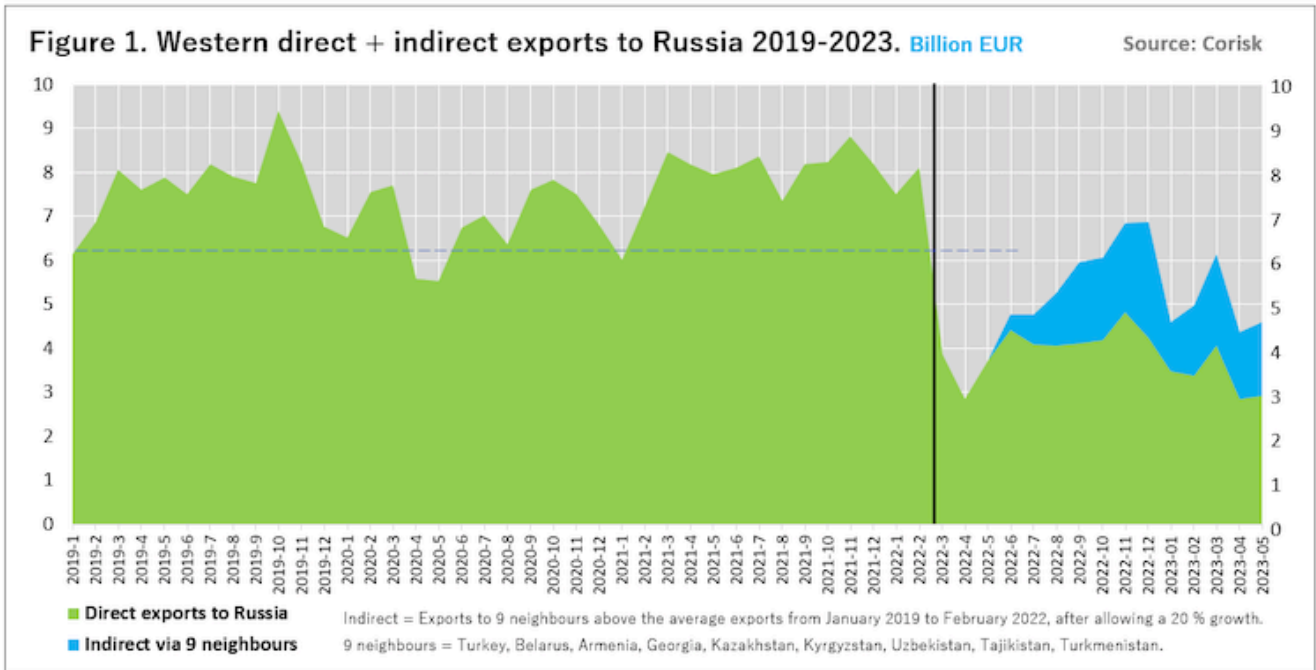


Figure 1 reveals three important stages, relating to the Russian attack on Ukraine in February 2022 (black line). First, Western exports to Russia increased significantly in late 2021 which probably reflects Russian hoarding of certain technologies and goods prior to the attack. Second, Western exports to Russia declined dramatically until April 2022, presumably due to “shock restraint” by exporters during the early phase where logistics were disrupted, and many exporters possibly struggled to get an overview of the legal framework relevant for their goods and trade partners.

The third phase starts in May 2022, where direct exports to Russia picks up, presumably as logistics networks are re-established and exporters gain a better understanding of the regulatory frameworks surrounding their trade. But more importantly, Western exports to third countries surrounding Russia (blue) rapidly picks up from May 2022 and becomes overtly excessive, indicating indirect Western exports to Russia in the magnitude of 1-3 billion Euros per month.

Two important regulatory milestones can be analyzed with respect to the data. First, the many export bans introduced from 10 July 2022 immediately resulted in a clear decline in direct Western exports to Russia, but this was more than offset by a rapid and strong growth in excessive exports to neighbors (indirect violations). Second, the many exports and transit bans introduced from around 27 March 2023 initiated a new, clear decline in direct exports to Russia, which was not offset by increases in shadow trade. This indicates an increasing effect of the sanctions packages over time, but more granular analysis should be conducted to understand the full impact of the latest rounds of sanctions.

In **Figure 2**, we estimate the excessive Western exports to nine of Russia's neighbors, including Turkey, broken down by exporting country. Altogether, in the 15 months between March 2022 and May 2023, our 21 Western countries conducted excessive (abnormal) exports to the value of 18.7 billion Euros, which indicates the level of indirect exports to Russia. It is important to bear in mind that these data present official exports by country of consignment, which means that some countries' exports may include considerable amounts of goods that originate in other countries. This may in particular concern the large indirect exports flowing from





Lithuania, which are to a large degree channeled as excessive Lithuanian exports to Belarus but include both Lithuanian and other Western commodities.

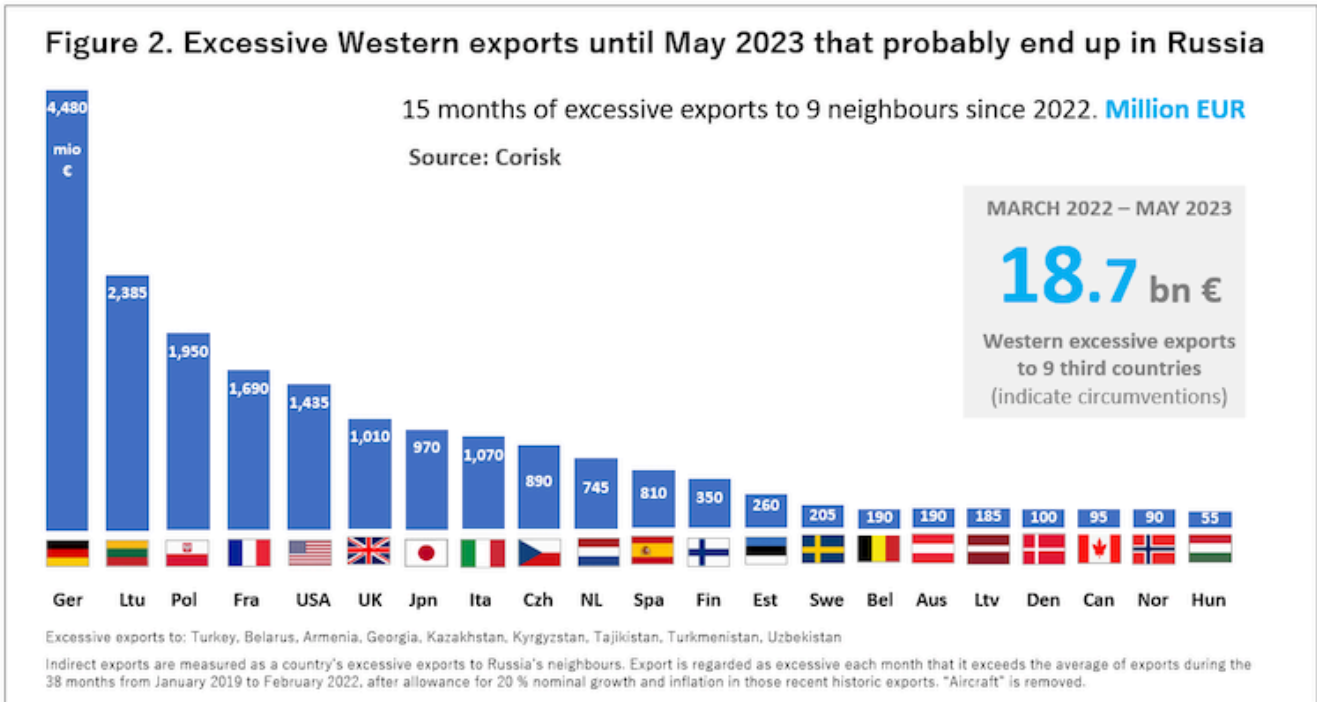
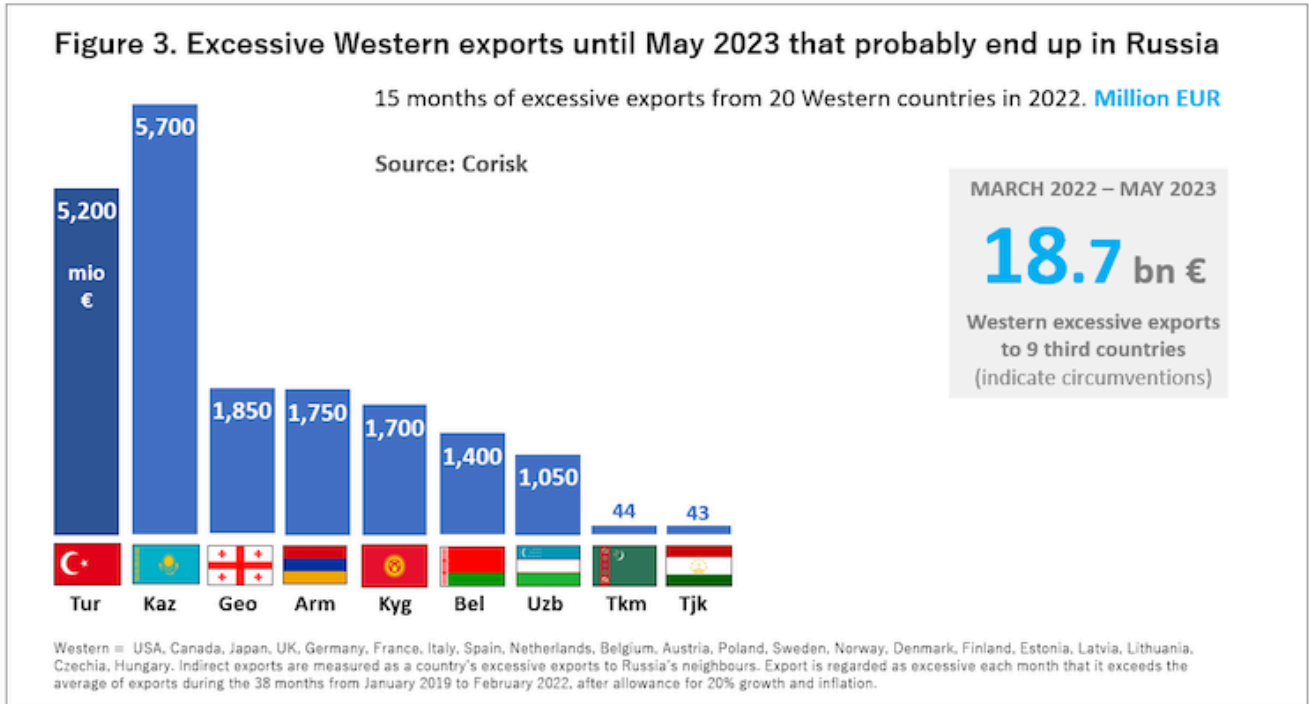


Figure 2 reveals how Germany stands out with almost a quarter of all excessive Western exports to Russia's neighbors, whereas Lithuania and Poland also facilitate very significant excessive sales via third countries. Germany is historically the largest Western exporter to Russia, while the United States presents growing but relatively modest indirect export indications. The United Kingdom and Canada also present relatively moderate levels of indirect violations, which is interesting as these countries have other sanctions regimes and legal systems than EU member states. Most strikingly, the Nordic and Baltic countries, except Lithuania, also present only modest indications of indirect violations, despite their geographic proximity to Russia. However, Finland's indicated indirect exports of 350 million Euros are noteworthy, and this country also directly borders Russia.

In **Figure 3**, we present the same estimate of excessive Western exports to Russia's neighbors since March 2022, but this time broken down to depict the importing or facilitating country filling the role of an intermediary. Importantly, we have not yet included the United Arab Emirates and other significant third countries in this analysis. We see how Kazakhstan absorbs the largest excessive Western exports, almost one-third of the total over the 15 months under consideration. Turkey comes second with more than 5 billion Euros in excessive Western exports that we assess as included in Turkish exports to Russia. Belarus deserves specific mention – the estimate of 1.4 billion Euros in excessive exports and indirect violations via Belarus is probably too low. This is because Belarus itself has been the subject of sanctions since March 2022, which initially brought down Western exports to the country and makes it much harder to establish a good historical baseline for comparison. Customs data indicate larger Western indirect exports via Belarus, than what Figure 3 presents.



#### 4.4. European exports of specific sanctioned goods to Russia

So far, we have only *estimated* the excessive Western trade based on official data on *total* trade, asserting that excessive trades indicate indirect exports to or “shadow trade” with Russia. This kind of top-down estimate based on macro data is commonly applied by analysts but has limited precision.

In this section, we turn to micro data from customs databases, and provide bottom-up summaries of accounting data for *actual* trade in sanctioned goods. Such data give useful information on how Western exports are affected by new regulations. The results accrue from analysis of Russian and Kazakh customs import data, with the important caveat that these data exclude much of the trade via Belarus and Armenia inside the EEU customs union (see Figure 3). This means that the full European indirect exports to Russia in Figures 4-8 will be somewhat under-estimated.

Through figures 4-8, we will present *actual* European exports to Russia plus excessive exports via Kazakhstan of 17 groups of war-relevant commodities sanctioned by the EU and USA, exported from a total of 28 European countries.<sup>47</sup> This stands apart from Figures 1-3, which brought *estimates* of *all* Western shadow exports of *all* groups of sanctioned goods. We will first present the European exports of 17 sanctioned groups at the commodity level in Figure 4, according to their European place of departure in Russia's import data, and according to their European place of origin in the Kazakh data (where all the goods depart from Kazakhstan).

<sup>47</sup> The identification of important commodities to the war effort follows from several reports issued by RUSI, CSIS, and the Government of Ukraine, in 2023. The 28 countries surveyed are: Lithuania, Latvia, Estonia, Finland, Sweden, Denmark, Norway, Ireland, Poland, Germany, Czech Republic, Slovakia, Hungary, Austria, Slovenia, Croatia, the Netherlands, Belgium, Luxembourg, France, Spain, Portugal, Italy, Greece, Bulgaria, Romania, the United Kingdom, and Switzerland.



The reason why we apply place of departure in the Russian data and place of production (origin) in the Kazakh data, is to avoid double accounting. Then, we present European exports according to their place of production of goods (origin) at country level in Figures 5 and 7. This metric gives an indication of how well Western companies manage to control the end-use and end-trade of their war-relevant products, regardless of which territory they enter Russia from. Finally, we present the European place of departure (shipment) of the sanctioned goods, according to the last country in which the goods were physically located before they entered Russia. This metric gives an indication of how well Western and other governments and customs agencies succeed with export control of goods leaving their territory, regardless of which country is the formal exporter.

Figures 5 and 7 will indicate the success of businesses per country in complying with the relevant sanctions, while Figures 6 and 8 will indicate the success of governments and customs authorities in curbing shipment from national territories. The goods in Figures 5 and 7 are all of European origin, which is vital as these figures address the compliance of European businesses. The goods in Figures 6 and 8 will contain some re-exports of non-European goods, which is acceptable as these figures first of all address the success of European authorities in enforcing rules and controlling exports.

The war-relevant goods are grouped according to their *HS classification* and include oils, paints and polyamides (3208, 3209, 3403, 3908), IT components (8541, 8542), IT hardware (8471), ball bearings and shafts (8482, 8483), trucks (87012, 870422, 870432, 871639), powerful diesel cars (87033319, 87033390), car and truck parts (8708), and drones and aircraft parts (8806, 8807).<sup>48</sup> Among these, HS groups 3908, 8481, 8482 and 8703 contain a negligible amount of non-sanctioned commodities, but even they have clear industrial application and may even have direct military utility.<sup>49</sup>

In **Figure 4**, we present the development in 2022-2023 of 17 war-relevant commodity groups departing directly to Russia from 28 European countries and departing to Russia from Kazakhstan with origin in the same European countries.<sup>50</sup> This choice of different data types allows us to avoid double accounting at acceptable data retrieval efforts. Months with negative values have been removed at commodity level, since negative indirect exports make no logical sense. The negative values were modest with low likelihood of noticeable effects of delayed exports to account for.

Figure 4 shows how Russia's imports went through four distinct sanction periods, starting with the post-attack period ("Russia attack") where vehicles and some IT goods were sanctioned from March 2022 and exports massively dropped, likely due to a 'rules shock' effect. In the second period from July 2022, many tools, chemicals, and mechanical goods, including ball bearings were sanctioned ("Tools sanctioned"). In the third

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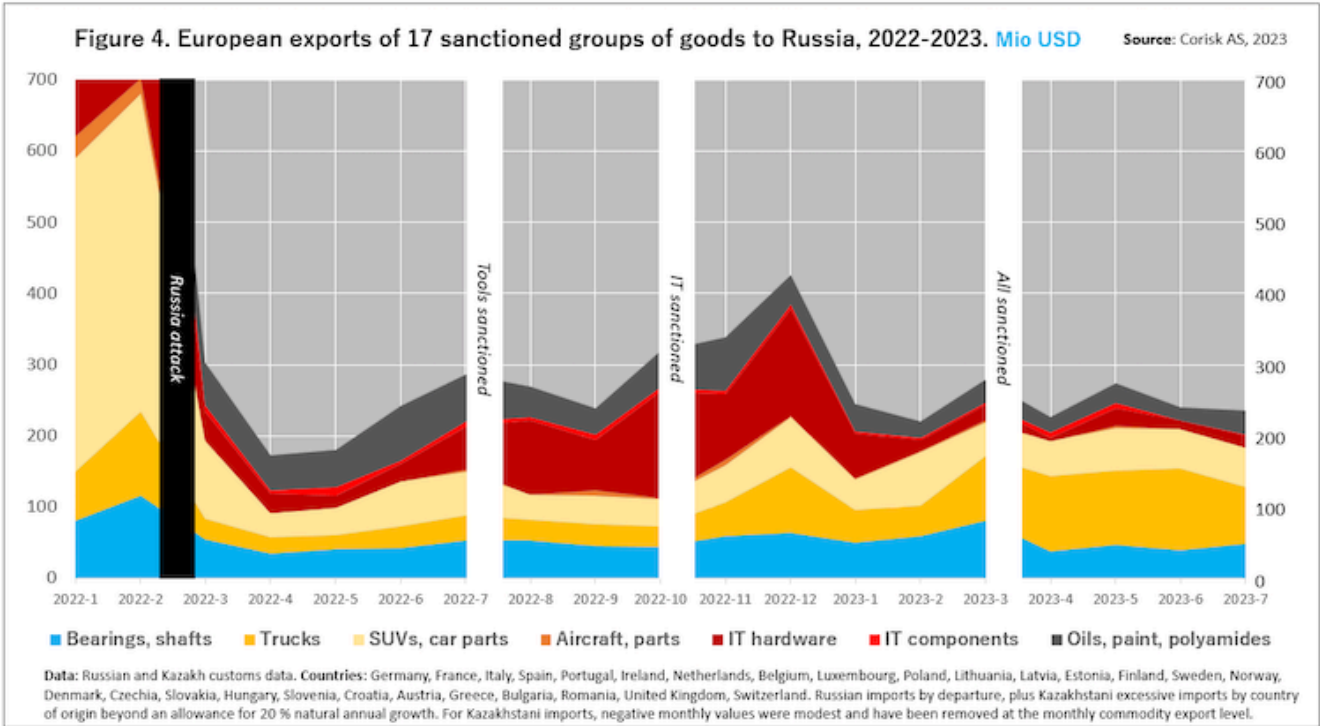
48 Among these groups, many goods were sanctioned from April 2022, some from July 2022, October 2022, or March 2023. More than 99 percent of the goods in the sample were fully sanctioned after 27 March 2023. The car parts (18708) and powerful diesel cars above 2.5 liters engine (HS 87033319, 87033390) are sanctioned if costing more than 50,000 EUR, which detailed surveys show is the case for all of the cars exported via third countries, and most of the cars exported directly. For car parts, it is hard to safeguard the cost of vehicles they are intended for, and customs officials we have consulted tend to regard all car parts as de-facto sanctioned.

49 For example, powerful diesel SUVs at 45,000 EUR will have the same battlefield value as SUVs at 50,000 EUR.

50 The countries surveyed are: Ireland, United Kingdom, Norway, Sweden, Finland, Denmark, Estonia, Latvia, Lithuania, Poland, Germany, Netherlands, Belgium, Luxembourg, France, Spain, Portugal, Italy, Switzerland, Austria, Hungary, Slovenia, Croatia, Romania, Bulgaria, and Greece.



period from October 2022, more IT goods and components were sanctioned (“IT sanctioned”). And in the latest period from April 2023, practically all the goods in question were sanctioned (“All sanctioned”). In that last period on the right-hand side of Figure 4, all European exports or shipments of these 17 groups of goods should have ceased.



In Figure 4, we see how European exports to Russia of the sanctioned goods fell dramatically after Russia's attack on Ukraine in February 2022. In this period, trucks, cars and car/truck parts (yellow) became sanctioned but we see clearly how the exports of these goods increased substantially in 2023. Further, we see how new export bans from July on mechanical parts (blue) and chemicals (grey) may have had some temporary effect, but soon gave way to renewed growth in the exports until December 2022. Please note that Russian imports from Western countries have a regular tendency to fall considerably from December to January, so that the immediate and strong decline in January 2023 should not be fully attributed to sanctions effects.

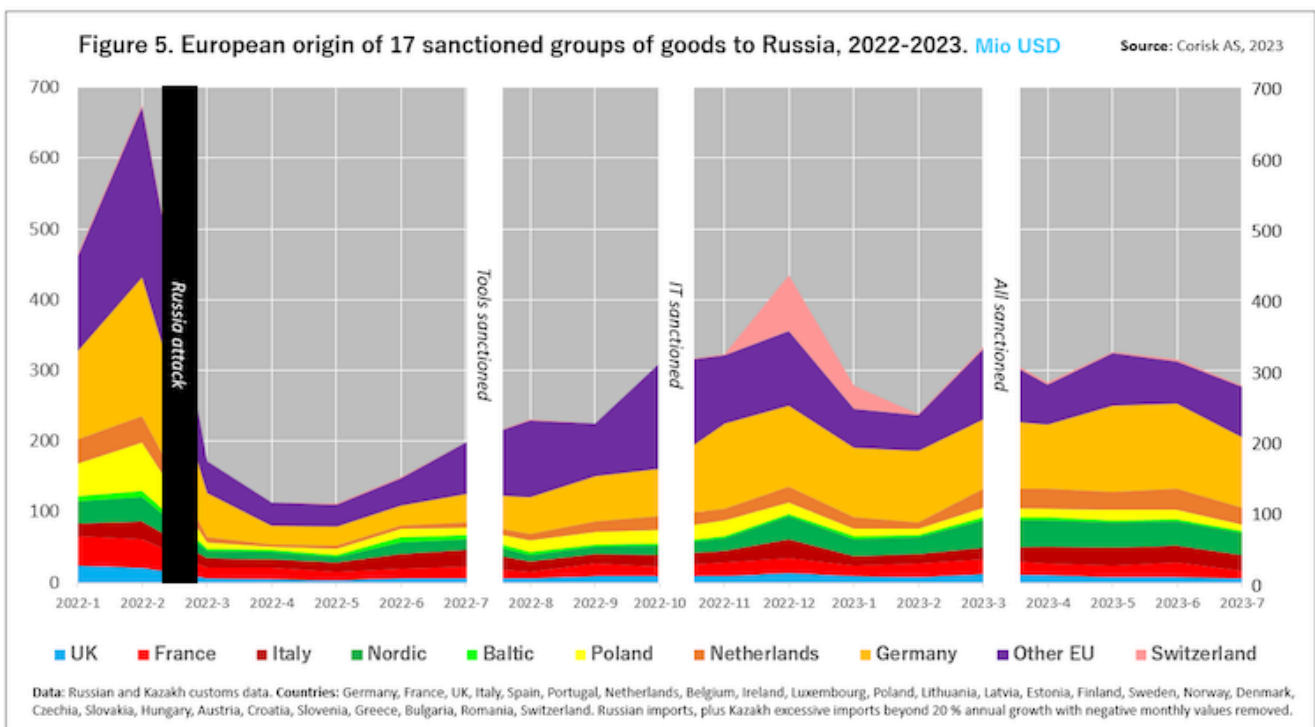
The new bans on exports of IT hardware (scarlet) from October 2022 may have had a more profound effect on European shipments of computers and memory units, while the direct shipments of digital IT components including semiconductors and integrated circuits (red) was never substantial from European countries – the larger shipments of predominantly US microchips flow mostly from East Asia, even though exports from European companies are also indeed recorded.<sup>51</sup> [Wie ein Deutscher Computerchip in russische Raketen gelangt](#), *Frankfurter Allgemeine Zeitung*, 12 August 2023 (accessed 22.10.2023).

51 See for example this article on German company Infineon: Konrad Schuller:



European exports of the sanctioned groups peaked at 400 million USD in December, with monthly levels otherwise fluctuating in the range 200 – 300 million USD per month (values in Euros being only slightly lower). In the last period from April 2023, practically all the goods in the survey were duly and conclusively sanctioned and all the exports in Figure 4 should then have ceased. But shipments of trucks, cars and car parts, mechanical parts, and chemicals continued to flow to Russia, while shipments of computers and memory units (IT hardware) have been substantially reduced in 2023.

In **Figure 5**, we present Russia's imports of the same 17 groups of sanctioned, European commodities as in Figure 4, but we group them according to the European country of origin as they were imported by Russia and excessively imported by Kazakhstan. The figure represents similar trade as Figure 4 but contains exports solely by country of origin and thereby indicates how well European companies succeed in complying with sanctions regulations. Months with negative values have been removed at country level. We have divided the figure into the same four sanction periods as in Figure 4, allowing analysis of the effect of regional and national regulations throughout the period.

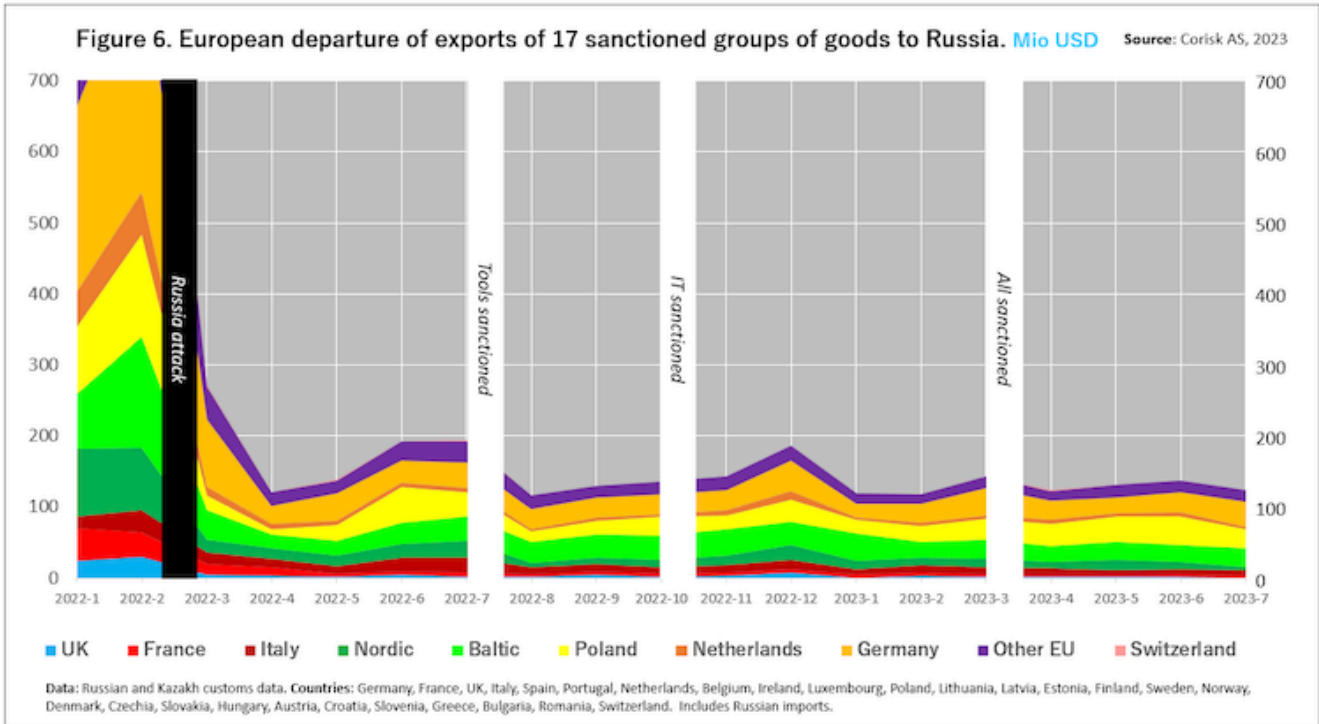


In Figure 5, we see how European exports of 17 sanctioned goods develop for individual countries and regions. We notice how exports from the UK remain marginal throughout the period (blue), in line with the macro analysis and other findings. France and Italy are also relatively marginal exporters of these sanctioned goods (red), with little deviations across the periods. The Nordic countries, however, seem to increase their direct and indirect exports to Russia (green), and we will see below in Figure 7 that Sweden is behind the bulk of these traded products. The Baltic states have little own production of the 17 groups of war-relevant goods (bright green), and the same is generally the case for Poland (yellow). However, there is a more profound increase in the value of goods that are exported to Russia and originate in the Netherlands (brown), Germany (orange), and other EU countries (violet). These countries retain more or less the same export volumes throughout the period, with little reduction even in the last period where all the goods are sanctioned.





In **Figure 6**, we present Russia’s imports of the 17 groups of sanctioned goods that were shipped to Russia directly from Europe (country of departure). The data indicate how well European countries and their customs authorities manage to control the shipment of sanctioned export goods from their territory, regardless of whether or not the producer or seller of the goods was a European company. Again, we divide the chart into the same four periods. In the last period, practically all the 17 groups of goods were sanctioned, and shipments should fall significantly to suggest good enforcement.



In Figure 6, we see in detail how the total shipments of 17 sanctioned groups of goods from European territory developed for individual countries and regions. Shipments of sanctioned goods from the UK, France and Italy virtually vanishes fully as a result of the sanctions (blue, red), but data reveal that these countries partly continue exporting, particularly via Turkey (Figure 5). There is little shipment from the Nordic countries (dark green), only Finland has any degree of direct shipment in this group. However, the Baltic states are an important place of final shipment to Russia, making up almost a third of all European shipments throughout the different sanctions periods illustrated in the figure (bright green). Shipment values are also more or less maintained despite sanctions from Poland (yellow), Germany (orange), and other EU countries (violet).

We see from Figure 6 that European countries shipped far fewer products than they produced among the 17 sanctioned groups of goods (Figure 5). This confirms the general macro picture of a European inclination to indirectly violate sanctions restrictions by way of exports via third countries (Figures 1-3). While the 28 European countries studied produced 17 sanctioned goods worth of 200-300 million USD per month (Figure 5), they shipped such goods worth 100-200 million USD per month (Figure 6), with a resulting total of European indirect exports to Russia via third countries of 100 million USD per month for only these 17 groups.



#### 4.5. The extent of production and shipment of sanctioned goods per country

In Figures 4-6 above, we summarized the monthly exports to Russia of goods that were produced or shipped from 28 European countries. But sanctions were introduced successively and not all the 17 groups of goods were sanctioned in all of the countries all of the time. Therefore, we will now present the same exports of 17 groups of sanctioned goods to Russia, but this time only during the year 2023, when virtually all of the goods were sanctioned in the EU for most of that period. This gives a better indication of a compound value of sanctions violations (direct and indirect), since the resulting data will represent almost entirely illicit exports taking place during a period when sanctions are in force. Again, note that the values here are for only 17 groups of goods over 7 months, therefore being much lower than the estimates in figures 2-3 for exports of all sanctioned goods over 15 months.

In **Figure 7**, we present Russian imports of 17 groups of sanctioned goods by country of production in 2023, regardless of where the goods are physically shipped from. This indicates the success of the producer businesses in complying with sanctions, by limiting the sales of their products to Russia. We see how German goods dominate the supplies of the studied goods to Russia, far ahead of the production of such sanctioned goods for the Russian market in the Netherlands, Italy, Sweden, and France. Countries with a relatively low production of such sanctioned goods for the Russian market include Southeast Europe, the Baltic states, and the Nordic countries excluding Sweden.



The total produced goods among 17 sanctioned groups for the Russian market in Figure 7, was approximately 2.2 billion USD (2.1 billion Euros) for the 28 European countries in the first seven months of 2023. This includes indirect exports via Kazakhstan but will exclude some intra-EEU volumes exported via Belarus and Armenia, thereby implying that the total values in Figure 7 are marginally under-estimated.



In **Figure 8**, we present Russian imports of 17 groups of sanctioned goods by European country of departure in 2023, regardless of who was the formal exporter or where those goods were produced (they were mostly European). These data indicate the success of European governments and customs in curbing the shipment of sanctioned goods from their territory. The total values are lower than in Figure 7, because they do not include European exports that go via Turkey, the United Arab Emirates, or other third countries. They only present goods flowing directly from Europe and goods flowing formally via Kazakhstan but de-facto partly or wholly via Kazakhstan, without double counting.<sup>52</sup>

Poland and Germany are leading in shipping the sanctioned goods to Russia, but there are also substantial shipments from Lithuania and Belarus, of which micro data reveal that exporters in Lithuania ship many sanctioned goods to Russia via Belarus. With their proximity to Russia, Finland, Latvia, and Estonia also portray substantial direct shipments to Russia. Countries with a relatively low shipment of such goods to Russia include the UK, Austria, Switzerland, Southeast Europe, and Nordic countries except Finland.



The total European shipment of 17 sanctioned groups to Russia was 1 billion USD (900 - 950 million Euros) for the first seven months of 2023. This will include some non-European goods, but we can safely assert that European producers exported more than 2 billion Euros of these 17 groups of war-relevant goods to Russia, with a bit more than half of these exported via third countries and almost half shipped directly from European territory.

<sup>52</sup> In reality, substantial parts the goods accounted as departed from Kazakhstan to Russia may also have de-facto departed from Europe to Russia. It would be wishful to include also the values exported by each European country via other EEU member states, but only Kazakhstan issues its own customs data. That enable us to include data for Kazakhstan and still fully avoid double counting of trades at an acceptable data retrieval effort.



#### 4.6. The modus operandi of European sanctions violations

Based on customs micro data not presented here, we observe that countries in Northern Europe mainly export indirectly to Russia via northern routes, with Kazakhstan and Kyrgyzstan important transaction facilitators. The United Kingdom and South European countries mainly make use of indirect export routes via Turkey. Whereas Turkey undoubtedly channels goods to Russia via their territory through re-exports via the Black Sea, the role of Kazakhstan is generally different. Customs data reveal substantial Western exports to Russia via the northern routes of Finland, the Baltics and Belarus, where the official exporter is a company from an ex-Soviet state. Companies registered in countries like Kazakhstan can assist Russian importers in the critical middleman function of providing currency for payment. A surplus on Kazakhstan's external balances may allow for such a crucial role.

Evidence indicates that several EU member states allow direct exports of sanctioned goods from their territory to Russia, with or without a non-EU exporter involved in the supply chain. Further, there are substantial exports of sanctioned goods to Belarus that should evoke sincere concern in the EU. And not least, companies registered in countries like Uzbekistan, Kyrgyzstan and Kazakhstan are often performing the official export sales transaction when goods are shipped directly to Russia from EU territory. Shipments from certain EU ports attest to issues in customs authorities' control of exports.

During the summer of 2023, Corisk conducted a case study of the 3,926 shipments to Russia of sanctioned goods produced in Finland and Norway that were traded between March 2022 and April 2023. Each shipment represents Russian imports that took place at least one month after the entry into force of the relevant EU sanctions.<sup>53</sup> Each trade was thereby technically in violation of sanctions, although note that we have not checked for each trade whether it had received national permission under the EU rules. The data in Figure 9 represent trades in goods listed by the EU as sanctioned but are not the result of detailed legal analysis, and do not imply an allegation of wrongdoing by any companies or individuals. There is a minor proportion of trades involving companies producing for the fishery, agricultural, and forestry industry markets, where there is some uncertainty as to the legal status of the traded goods.

The shipments are recovered from Russian customs import data and exclude an additional volume of goods that arrived in Russia via re-export by traders in the EEU countries of Belarus, Armenia, or Kazakhstan. We corrected for double entries in the database. The result must not be confused with the estimates for Norway's and Finland's total indirect exports to Russia (440 million Euros) in Figure 2, which include full estimates for trade via EEU countries, and which represent exports by country of consignment rather than exports by country of origin. In the Russian import data utilized in Figure 9, almost all indirect exports via Kazakhstan and Armenia are lacking. We have estimated excessive exports to these two countries to imply indirect exports of 225 million Euros for Finland and 52 million Euros for Norway, explaining almost all of the deviation between Figures 2 and 9.

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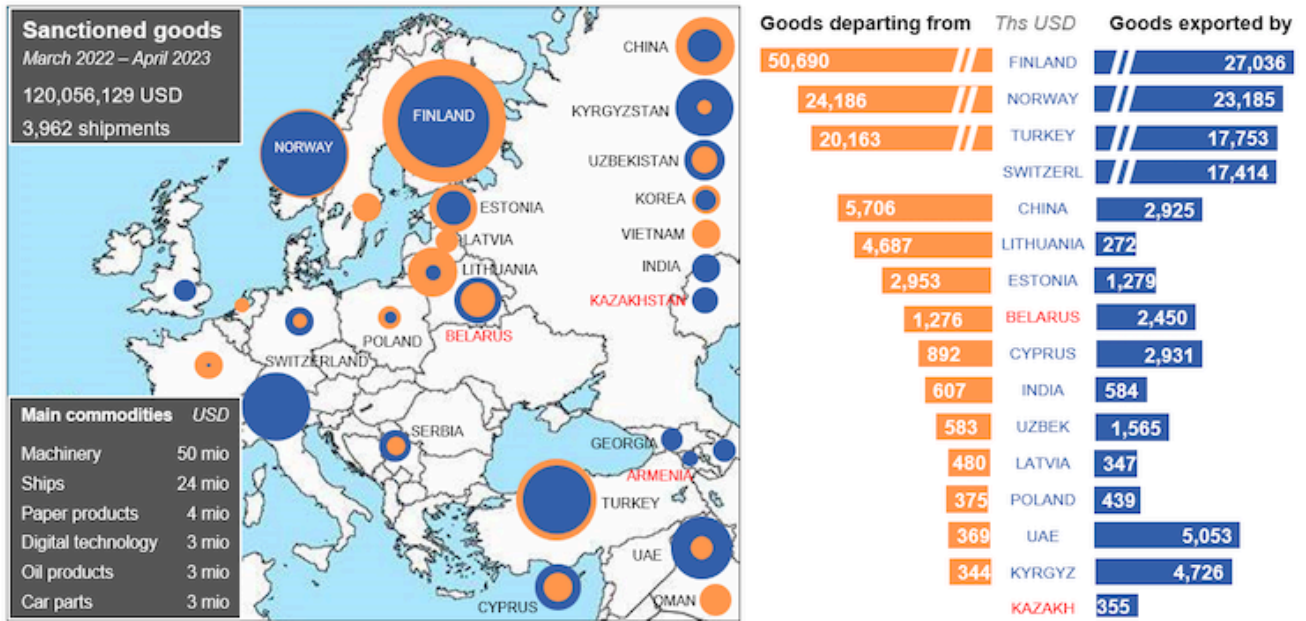
<sup>53</sup> In reality, the date of import is the date at which the consigned goods were retrieved by the Russian importer from the Russian Custom's custody. The allowed lag of 1 month is chosen to account for logistic delays.



Results of the case study are presented in Figure 9. The 3,926 shipments represent sanctioned goods worth 120 million USD produced in Finland or Norway and exported to Russia during 14 months from March 2022 to April 2023. It includes all trades in goods listed as sanctioned by the EU, albeit with the caveat that some of these may have had government approval and may therefore not constitute illegal acts.

**Figure 9. Exports to Russia of sanctioned goods produced in Norway or Finland**

*Includes direct exports and exports via intermediaries, but contains few data for exports via the EEU customs union*



In Figure 9, we distinguish between which departing country the goods were shipped from (orange), and which trading country that was the registered domicile of the exporting agent or company (blue). For example, a Finnish good may be exported by a Finnish agent from Finnish territory, or by a Turkish agent from Finnish territory, or by a Finnish agent from Turkish territory, or by a Turkish agent from Turkish territory. The good will always have Finnish origin, but it may depart from Finland or from abroad (orange), and it may be exported by an agent registered in Finland or registered abroad (blue).

Orange circles denote the value of sanctioned goods being shipped to Russia directly from that country of departure (but exported by anyone). Blue circles denote the value of sanctioned goods being exported to Russia by a company registered in that trading country of export (but shipped from anywhere). For any given trade, the departure country and the trading country may be the same, or they may be two different countries.

Figure 9 reveals that sanctioned Finnish and Norwegian goods are predominantly shipped from the territories of Finland or Norway themselves (orange). Other important countries of departure include Turkey, China, Lithuania, Estonia, and Belarus. If the country of departure is a Western country, it befalls the customs authority of that country to enforce relevant export controls. Turning to the trading agents or companies performing the formal export sales to the Russian importers, these are predominantly registered in Finland and Norway themselves, followed by Turkey and Switzerland, and somewhat smaller values from the United Arab Emirates, Kyrgyzstan, Cyprus, China, Uzbekistan, Belarus, and Estonia. Foreign trading agents may perform the last-chain sales to Russia because the Russian importer is unable to acquire the foreign currency





needed to carry out the purchase from Finland or Norway. One or more non-Western companies are usually present in the supply chains, but the Finnish or Norwegian producers are still legally liable for complicity if there is a failure to comply with the prevailing sanctions.

From the data we can draw some lessons about the modus operandi of exports from Finnish and Norwegian producers of sanctioned goods. The supply chain to Russia usually involves at least one non-Western company as the trading agent, or a non-Western territory as the country of departure.

We generally find three main methods of exporting to Russia in the evidential trades:

- a. the Finnish or Norwegian goods are sold by domestic exporters (trading agents) and shipped (departing) directly from the domestic territory. The domestic trading exporter may be the producing company itself. Without government permission, both the domestic producer and the domestic trading agent violate the sanctions regulations, and the domestic customs authority has failed to prevent the violation from taking place through border export controls. Contrary to expectations, such direct violations of sanctions are quite common in the two countries, and direct exports from own territory is the general rule in their exports of ships, ships repair, heavy machinery, and car parts.
- b. the Finnish or Norwegian goods are sold by foreign exporters (trading agents) but shipped (departing) directly from the domestic territory or from another EU territory. Without government permission, this means that the domestic producer violates the sanctions regulations, and the European customs authorities have failed to prevent the violation from taking place through border export controls. Such violations via non-Western agents but from Western territory is very common in the data. The third-country agent often carries out the transaction in order to overcome Russian importers' shortage of hard currency. A trading company from an ex-Soviet country buys the sanctioned good from the Norwegian or Finnish producer, and sells it to Russia by shipment from Norway, Finland, or one of the Baltic states. This is quite common in exports of small-sized commodities by air, such as IT components.
- c. The Finnish or Norwegian goods are sold by foreign exporters (trading agents) and shipped (departing) from foreign territory. The Norwegian or Finnish producer has either deliberately sold the goods abroad knowing that the buyer there will re-export them to Russia, or the foreign buyer has bought the goods in the market and re-exports it to Russia without the knowledge of the producer. Domestic customs authorities are not to blame, but the exporter is responsible for ensuring that foreign buyers do not re-export the sanctioned goods to Russia. The re-exporting company is most commonly registered in Turkey, China, or elsewhere in Asia.

Based on detailed examination of the 3,962 shipments of sanctioned goods, we present below by order of export value 10 real-life trades that follow typical logistics routes and supply chains. For each trade, we do not indicate whether the goods were produced or shipped from Norway, or Finland:

1. Industrial equipment worth 2.4 million USD, shipped directly from the Nordic country of production to the city of Chelyabinsk in Russia, sold by an exporter registered in Switzerland.
2. Shipping equipment worth 350,000 USD, shipped directly from the Nordic country of production to Novgorod Airport in Northwestern Russia, sold by an exporter registered in the Nordic country.



3. Shipping equipment worth 341,000 USD, shipped from Tallinn in Estonia to St. Petersburg, sold by an exporter registered in Estonia which has carried out many sanctioned exports to Russia and was sanctioned by the US government from May 2023.

4. Oil products worth 282,000 USD from the Nordic country of production, shipped from Lithuania to Russia, sold by an exporter registered in Turkey.

5. Industrial products worth 267,000 USD, shipped from the Nordic country of production to southern Russia, sold by an exporter registered in Georgia.

6. Car parts worth 191,000 USD from the Nordic country of production, shipped from Minsk in Belarus to Russia, sold by an exporter registered in Kyrgyzstan.

7. Airport equipment worth 80,000 USD from the Nordic country of production, shipped by air from Vilnius Airport in Lithuania to Moscow Airport in Russia, sold by an exporter registered in Turkey.

8. Energy industry equipment worth 80,000 USD from the Nordic country of production, shipped from Lithuania to Moscow, sold by an exporter registered in Turkey.

9. Shipping equipment worth 11,200 USD, shipped directly from the Nordic country of production to the city of Kronstadt in Russia, sold by an exporter registered in Turkey.

10. Digital equipment worth 6,000 USD, shipped from Vantaa in Finland to St. Petersburg, sold by an exporter registered in Estonia, which was sanctioned by the US government from May 2023.

Based on these and countless other examples, we can infer some typical risks that Nordic and other companies encounter in the landscape of international trade with Russia.

- First, many companies are probably unaware of their sanctioned goods ending up in Russia, even if there are relatively few nodes in the supply chain.
- Second, several companies have sold sanctioned and non-sanctioned goods directly to sanctioned Russian importers (designated / listed companies), including importers that are known to supply military weapons production facilities.
- Third, several EU-registered companies sell sanctioned goods to agents also registered in the EU, which are partly sanctioned by the US government and partly under scrutiny by the European Commission and/or Ukraine for systematically reselling sanctioned goods to Russia.
- Fourth, a substantial number of Western companies display a pattern of repeated and logistically similar indirect trades following the introduction of sanctions, attesting to deliberate schemes that strengthen the impression that indirect exports to Russia may be intentional.



## 5. Legal impact of sanctions violations<sup>54</sup>

### 5.1. Introduction to sanctions currently in force against Russia (and Belarus)<sup>55</sup>

The legal bases for the EU, UK and US sanctions regimes currently in force against Russia were implemented in 2014 as a response to Russia's illegal annexation of the Ukrainian territory of Crimea.<sup>56</sup> In addition to the sanctions regimes imposed by the EU, UK and US, several other European countries align their national legislation to conform to these regimes (most often adopting the EU's sanctions). This includes the candidate countries for the EU, North Macedonia, Montenegro, Albania, Ukraine and Bosnia and Herzegovina, and the EEA countries, Iceland, Liechtenstein and Norway as well as Switzerland. Other countries, including G7 members and other third countries such as New Zealand and Australia, have also implemented sanctions regimes against Russia.

While the UN General Assembly has condemned Russia's aggression, the UN has to date not implemented any sanctions against Russia in response to its illegal activities towards Ukraine, and it will likely not do so due to the veto power Russia holds as a permanent member of the UN Security Council.<sup>57</sup> For instance, days after the full-scale invasion of Ukraine, Russia vetoed a UN Security Council resolution demanding that Russia stop its attack on Ukraine.<sup>58</sup> <https://news.un.org/en/story/2022/02/1112802> (accessed 07.09.2023). Recently, Russia has also vetoed the imposition of UN sanctions against other third countries,<sup>59</sup> which may result in a weakening of the UN as a sanctions authority going forward.

Following Russia's full-scale invasion of Ukraine on 24 February 2022, the sanctions against Russia have expanded rapidly and significantly. To date, the EU has implemented eleven packages of sanctions, reinforcing the measures targeted at Russia's industry, economy and resources. The main objective of the sanctions is to deprive Russia of its capability to continue its aggression against Ukraine. As such, one

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<sup>54</sup> This chapter is written by Wikborg Rein (Hanne Rustad Gundersrud, Elisabeth Roscher, Tine Elisabeth Vigmostad, Marie Solberg Hatten). The legal assessment provided herein is exclusively from a Norwegian law perspective, with a description of other jurisdictions based on publicly available sources.

<sup>55</sup> For a general introduction to the history and political purpose of sanctions, please see section 2.1 above.

<sup>56</sup> On 20 February 2014, the Council of the European Union adopted Council Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, followed on 17 March 2014 by Council Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine ("**Regulation 269/2014**"), in turn followed on 23 June 2014 by Council Regulation (EU) No 692/2014 concerning restrictions on the import into the Union of goods originating in Crimea or Sevastopol, in response to the illegal annexation of Crimea and Sevastopol. Finally, on 31 July 2014, the Council of the European Union adopted Regulation 833/2014. In Norway, Regulation 15 August 2014 no. 1076 on restrictive measures regarding actions that undermine or threaten the territorial integrity, sovereignty, independence and stability of Ukraine (the "**Norwegian Ukraine Regulation**") was implemented shortly after, in large reflecting the EU's restrictive measures. In the US, Executive Order 13660 on Blocking Property of Certain Persons Contributing to the Situation in Ukraine ("**E.O. 13660**") entered into force on 6 March 2014. Upon the UK's departure from the EU, the Russia (Sanctions) (EU Exit) Regulations 2019 No. 855 (the "**UK Regulation**") entered into force. It is also worth noting that on 23 February 2022, the EU adopted another Regulation concerning restrictive measures in response to the illegal recognition, occupation or annexation by the Russian Federation of certain non-government controlled areas of Ukraine (Council Regulation (EU) 2022/263).

<sup>57</sup> As described above in section 2.1., the UN has the authority to impose measures to maintain or restore international peace and security, including the imposition of sanctions under Chapter VII, Article 41 of the United Nations Charter.

<sup>58</sup>

<sup>59</sup> On 30 August 2023, the UN Security Council voted for an extension of the sanctions regime against Mali, but Russia exercised its veto power to block the extension.



objective of the sanctions imposed against Russia is to end the aggression altogether, while also seeking to restore respect for human rights, humanitarian law and other core tenets of international law.

In addition to the rapidly evolving sanctions targeting Russia, similar restrictions have been (and are being) imposed on Belarus for its involvement in Russia's aggression. Following the collapse of the Soviet Union, Belarus maintained close ties with Russia. Belarus has a strategically important geographic location, bordering Ukraine in the south and Russia in the north-west. Notably, as the Belarusian borders are in closer proximity to Kyiv than Russia's own borders, Russia executed part of its invasion through Belarusian territory.

Sanctions against Belarus pre-date Russia's invasion of Ukraine in February 2022, having originally been imposed to end the authoritarian regime's rigging of elections, violence and repression against its own people.<sup>60</sup> [Timeline - EU restrictive measures against Belarus](#), updated August 2023 (accessed 16.09.2023). The measures have subsequently been extended due to the country's support for Russia's aggression.<sup>61</sup> In its conclusions of 24 February 2022, the European Council, in addition to condemning Russia's military aggression against Ukraine, strongly condemned "*the involvement of Belarus in this aggression against Ukraine*" and called for "*the urgent preparation and adoption of a further individual and economic sanctions package that will also cover Belarus*".<sup>62</sup> [European Council conclusions, 24 February 2022 - Consilium \(europa.eu\)](#) (accessed 13.09.2023).

The latest round of EU sanctions against Belarus, implemented on 3 August 2023, included, among other things, an export ban on firearms and ammunition and export restrictions on goods used by Russia in its aggression against Ukraine, resulting in a closer alignment of EU sanctions targeting Belarus and Russia.<sup>63</sup> Similarly, other jurisdictions and sanctions regimes have implemented sanctions targeted at Belarus in light of its enabling of Russia's aggression against Ukraine.<sup>64</sup> [U.S. Treasury Targets Belarusian Support for Russian Invasion of Ukraine | U.S. Department of the Treasury](#) (accessed 13.09.2023). Further, one of the purposes of the UK's Belarus (Sanctions) (EU Exit) Regulations 2019 is to encourage the Government of Belarus to "cease actions destabilising Ukraine or undermining or threatening the territorial integrity, sovereignty or independence of Ukraine, including by supporting or facilitating Russia's actions in respect of Ukraine", cf. Regulation 4(e).

The sanctions against both Russia and Belarus encompass a diverse range of measures, ranging from sector and trade (product) restrictions on one end to the targeting of specific individuals and entities claimed to be benefiting from or in some form contributing to the aggression against Ukraine on the other. The trade restrictions have the overarching objective of limiting trade in products and services that generate revenue for

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61 See Council Regulation (EU) 2022/355 of 2 March 2022 amending Regulation (EC) No 765/2006 concerning restrictive measures in view of the situation in Belarus (now also including the phrase "and the involvement of Belarus in the Russian aggression against Ukraine") and the subsequent amendments. See also Council Decision (CFSP) 2022/356 of 2 March 2022 amending Decision 2012/642/CFSP concerning restrictive measures in view of the situation in Belarus.

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63 Council Regulation (EU) 2023/1594 of 3 August 2023.

64 For instance, the US implemented sanctions targeting Belarus in connection with the invasion in February 2022, see e.g. this OFAC press release:



the Russian economy. Additionally, they seek to impede Russia's access to weapons and other goods, including technology, that are or may be used in warfare.

## 5.2. Export and import restrictions comprising both direct and indirect transactions

The sanctions do not only limit individuals and entities subject to relevant sanctions regimes from dealing directly with Russia with respect to restricted goods, individuals and entities. They also prohibit indirect dealings with such restricted goods, individuals, and entities. For instance, the prohibition in Article 2a of Regulation 833/2014 states that it is prohibited to "*sell, supply, transfer or export, directly or indirectly, goods and technology which might contribute to Russia's military and technological enhancement... to any natural or legal person, entity or body in Russia or for use in Russia.*"

The prohibition clearly captures the sale of restricted goods directly to a person or entity in Russia. Companies should bear in mind, however, that sales to a third party (e.g. a customer located in a third country) which subsequently sells the goods to a person in Russia, would be considered an *indirect* sale to a person in Russia, thereby also constituting a violation of the prohibition.

The prohibition against indirect dealings is closely linked to the prohibition against circumvention of sanctions, as further described in section 4.3 below. However, while circumvention is aimed at actions conducted "knowingly and intentionally" to circumvent the relevant provisions (e.g. a scheme to deliberately avoid the restrictions imposed by sanctions), the prohibition against indirect dealings with restricted goods and/or parties also targets negligent/inadvertent breaches. This places an additional obligation of due diligence on the relevant party to ensure that they do not inadvertently export goods to, or for use in, Russia, in breach of a relevant prohibition.

The degree of expected due diligence will differ on a case-by-case basis. A degree of caution is, however, generally required when dealing in areas known to be of high importance to Russia. For instance, compliance with the prohibitions against indirectly selling, supplying or exporting goods to Russia may require investigations into the ultimate beneficial ownership of counterparties, as well as their business operations, including typical customers and re-sale/export practices, to ensure that the transaction does not violate a prohibition against indirect sales to Russian individuals or entities.

Moreover, the prohibition on indirect dealings with restricted goods and/or parties imposes a responsibility upon all relevant actors, private or public, to ensure that the sanctions are implemented in accordance with their full potential.



### 5.3. Prohibitions on violations and circumvention of sanctions

It is prohibited to "knowingly and intentionally" circumvent sanctions.<sup>65</sup> Unlike direct and indirect sanctions violations, which in many jurisdictions can be punishable when committed negligently, the threshold for circumvention requires an intentional act. The Court of Justice of the European Union stated in the case C-72/11 (regarding sanctions on Iran) that the term "knowingly and intentionally" implies cumulative requirements of knowledge *and* intent. These requirements are met where the operator intentionally seeks to circumvent sanctions or is at least aware that its participation may have that object or that effect and accepts that possibility.<sup>66</sup> The European Commission has, in FAQs of 30 June 2023, confirmed that this interpretation also applies in the case of EU sanctions against Russia.<sup>67</sup> [Frequently asked questions on circumvention and due diligence concerning sanctions adopted following Russia's military aggression against Ukraine and Belarus' involvement in it \(europa.eu\)](#) (accessed 18.10.2023).

While both indirect violations and circumvention of sanctions are prohibited, it is, as discussed in chapter 3 above, evident that Russia is still able to obtain restricted goods, thereby undermining the efficacy of the sanctions. In order for the sanctions to attain their full potential in the effort to stop Russia's aggression against Ukraine and restore respect for human rights and international law principles, the loopholes must be closed. A measure to achieve this is the implementation of similar sanctions across the majority of the Western world. With respect to the sanctions against Russia, the UK, EU and US have generally sought to align and coordinate the measures imposed, although often with differences in the formulation and adoption of the rules imposed as well as reach and timing of implementation.<sup>68</sup> [U.S. and EU sanctions teams enhance bilateral partnership \(europa.eu\)](#) (accessed 07.09.2023).

Still, transit through third countries that are not subject to and have not aligned themselves with Western sanctions on restricted goods and technology, remains an issue and reduces the impact of the sanctions. In its eleventh package of sanctions imposed against Russia, which entered into force on 24 June 2023<sup>69</sup>, the EU specifically targeted indirect violations of sanctions via third countries as well as circumvention, strengthening its legal framework in order to tackle these issues.

Among the new measures are additional designation criteria added to Regulation 269/2014, allowing the designation of natural or legal persons, entities or bodies facilitating infringements of the prohibition against circumvention.<sup>70</sup> Furthermore, the eleventh package introduced legal tools to limit the sale of restricted goods and technology to third countries considered to constitute a high risk of being used to indirectly violate and/or circumvent sanctions.<sup>71</sup> Notably, Article 12f of Regulation 833/2014 introduces a new prohibition on the sale,

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<sup>65</sup> See e.g. Regulation 833/2014 article 12.

<sup>66</sup> Case C-72/11 (68).

<sup>67</sup>

<sup>68</sup> See e.g. the EU and US bilateral partnership:

<sup>69</sup> See an explainer here, <https://sanctionsnews.bakermckenzie.com/the-eus-eleventh-sanctions-package-against-russia/>.

<sup>70</sup> See Council Regulation (EU) 2023/1215 of 23 June 2023 amending Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.

<sup>71</sup> See Council Decision (CFSP) 2023/1217 of 23 June 2023 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine and Council Regulation (EU) 2023/1214 of 23 June 2023 amending Regulation (EU) No 833/2013 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine.





supply, transfer and export of *specified* goods and technology to individuals and companies located in *specified* third countries. Presently, the lists of restricted goods and technology and specified third countries remain empty. The Commission has confirmed that the lists will be populated only as a last resort, when communication and cooperation with the third countries concerned fail to yield a solution.<sup>72</sup> [Q&A on the 11th package of sanctions against Russia \(europa.eu\)](#) (accessed 07.09.2023). It seems plausible, however, that countries that might in due course be added to the list could be those from which we have already seen entities and individuals be designated for aiding Russia's war effort, including Iran, Syria, the United Arab Emirates and Uzbekistan.<sup>73</sup>

The European Commission also recently launched a guidance document intended to help EU operators conduct sufficient due diligence to prevent inadvertent violations or circumvention of sanctions against Russia.<sup>74</sup> [European Commission, 'Guidance for EU operators: Implementing enhanced due diligence to shield against Russia sanctions circumvention'](#) (07.09.2023) (accessed 20.09.2023). At the outset, the guidance document identifies examples of EU companies that might be at particular risk of indirectly violating or circumventing sanctions (and must therefore exercise particular vigilance), including but not limited to: (i) EU based manufacturers of goods that are in high demand in Russia (e.g. semiconductor devices), the export of which is prohibited to Russia from the EU, and where the volume of exports is increasing towards third countries with which trade was previously limited or non-existent; and (ii) EU based manufacturers of goods which may be easily miscategorized under an HS code not subject to sanctions.

The guidance document goes on to state that companies should assess the nature of the risks to which their sector, products and economic activities are exposed, and take steps to prevent these risks to ensure that their goods are not diverted to Russia. Such steps include becoming familiar with counterparties, implementing contractual clauses with third country business partners prohibiting further re-exports of items to Russia and Belarus and enhanced evaluation of risk by trained staff.

By publishing this guidance, the EU is also establishing a benchmark for future enforcement action. It seems likely that companies that inadvertently export restricted products to Russia via a third country, and which also fail to take the steps outlined in the document, would be at greater risk of being found to have negligently violated sanctions.

## 5.4. Consequences of violating sanctions

### 5.4.1. Criminal and administrative liability for sanctions violations

Criminal law in the EU has traditionally been a competence (power) exclusively pertaining to the EU's member states. This may change in the future, however, following a proposal from the European Commission in May 2022 to add violations of EU sanctions to the list of EU crimes,<sup>75</sup> [The EU proposes rules on freezing and confiscating assets \(europa.eu\)](#) (accessed 11.09.2023). which in turn led to the decision of the European

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<sup>73</sup> Regulation 833/2014 Annex XXXIII.

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Council late last year (and a subsequent draft proposal for a directive from the European Commission) to establish minimum rules concerning the definition of and penalties for violations of EU sanctions.<sup>76</sup> In parallel, through an amendment to Regulation 833/2014 of 3 June 2022, Article 8 of the Regulation was updated to expressly encourage EU member states to implement "as appropriate criminal penalties" in response to sanctions violations.<sup>77</sup> Pending legislative enactment of the Council's proposal for mandatory minimum penalties, however, it remains the case that there is no harmonized approach to enforcement across the member states (as discussed further below).

Across the member states of the EU, as well as Norway, the UK and US, there are significant differences in the type and severity of penalties that can be imposed for different sanctions violations, as well as the extent to which individuals and corporations can be held criminally or administratively liable for such violations. In 12 EU member states, as well as Norway and Switzerland, violation of sanctions is solely a criminal offense,<sup>78</sup> [Expert Report – Prosecution of sanctions \(restrictive measures\) violations in national jurisdictions: a comparative analysis \(europa.eu\)](#); [Eversheds Sutherland Global Sanctions Guide](#) (both accessed 16.09.2023). while in 13 member states, as well as in the UK and US, violations can amount to either an administrative or a criminal offense. Only two EU member states, Spain and Slovakia, have not made violation of sanctions an express criminal offense.<sup>79</sup> [Eversheds Sutherland Global Sanctions Guide](#) (accessed 16.09.2023).

#### Penalties for sanctions violations in EU member states, Norway, Switzerland, UK and US

Criminal offense only		Administrative or criminal offense		Administrative offense only
Croatia	Luxembourg	Austria	Italy	Spain
Cyprus	Malta	Belgium	Lithuania	Slovakia
Denmark	Netherlands	Bulgaria	Poland	
Finland	Norway	Czechia	Romania	
France	Portugal	Estonia	Slovenia	
Hungary	Sweden	Germany	UK	
Latvia	Switzerland	Greece	US	
		Ireland		

<sup>76</sup> See European Commission proposal for a Directive on the definition of criminal offences and penalties for the violation of Union restrictive measures (COM (2022) 684 final).

<sup>77</sup> Council Regulation (EU) 2022/879 of 3 June 2022, amending Council Regulation (EU) 833/2014.

<sup>78</sup>

<sup>79</sup>



As noted, the UK is an example of the dual approach – where violations can amount to either an administrative or criminal offense. For the former, the UK's sanctions regulator (OFSI)<sup>80</sup> has the power to impose a monetary penalty (up to a maximum of GBP 1 million or 50% of the estimated value of the funds or resources involved, whichever is greater) based solely on a factual violation of the UK sanctions regime, without also needing to prove any kind of fault (e.g. knowledge, recklessness, negligence).<sup>81</sup> OFSI is still required to prove that there was an actual violation of a sanctions prohibition, but only that this occurred "on a balance of probabilities" (i.e. that there was a greater than 50% chance), and without needing to show that the person that committed the breach knew or should have known that, or was negligent as to whether, their behavior would result in a sanctions violation.<sup>82</sup> For criminal penalties, however, where the maximum penalty is seven years' imprisonment, the requirement is still that the person committing the offense must have known or had a reasonable suspicion that the behavior could result in a sanctions violation, and this must be proven "beyond reasonable doubt".<sup>83</sup>

On the other hand, Norway is an example of a country where sanctions violation is solely a criminal offense.<sup>84</sup> This, in turn, means that prosecuting authorities must demonstrate beyond reasonable doubt both that a given act constitutes a violation of the Sanctions Act and that the person committing the offense acted with the requisite subjective fault. The subjective fault (guilt) must generally cover the entire objective content (i.e. all elements) of the relevant criminal provision.

Both negligent and intentional violations are caught, with the former carrying a maximum sentence of up to six months' imprisonment and the latter up to three years (both may also lead to fines of an unspecified (and unlimited) amount, to be determined according to the severity of the offense). In addition, there could be confiscation of proceeds from a criminal offense.

Although the threshold for both civil and criminal liability will vary between countries, most authorities would treat an intentional violation of sanctions as a more serious offence than an inadvertent or negligent breach. In countries where a sanctions violation can be both an administrative and a criminal offense, intentional violation would most likely result in criminal charges (which, as described above, is the case in the UK).

Penalty systems also differ. In 15 member states, as well as in Norway and Switzerland, the maximum length of imprisonment for individuals found guilty of sanctions violations is between two and six years.<sup>85</sup> [Genocide Network, Prosecution of sanctions \(restrictive measures\) violations in national jurisdictions: a comparative analysis, 2021](#) (accessed 16.09.2023). In eight member states, as well as in the UK, the maximum sentence imposed is between eight and 12 years. Of the countries that have in place a criminal regime for sanctions violations, only Greece and Romania have prison sentences below two years: in Greece, the maximum sentence is six months; whereas in Romania only criminal fines may be imposed, but no

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<sup>80</sup> Note that financial sanctions in the UK are enforced by both OFSI (for civil offenses) and the National Crime Agency (for criminal offenses). In addition, His Majesty's Revenue and Customs (HMRC) is responsible for the enforcement of trade sanctions.

<sup>81</sup> This is a relatively recent addition to the UK regime, introduced by the Crime (Transparency and Enforcement) Act 2022.

<sup>82</sup> See OFSI Guidance on enforcement and monetary penalties for breaches of financial sanctions, updated 31 August 2023.

<sup>83</sup> The Russia (Sanctions) (EU Exit) Regulations 2019, Part 9.

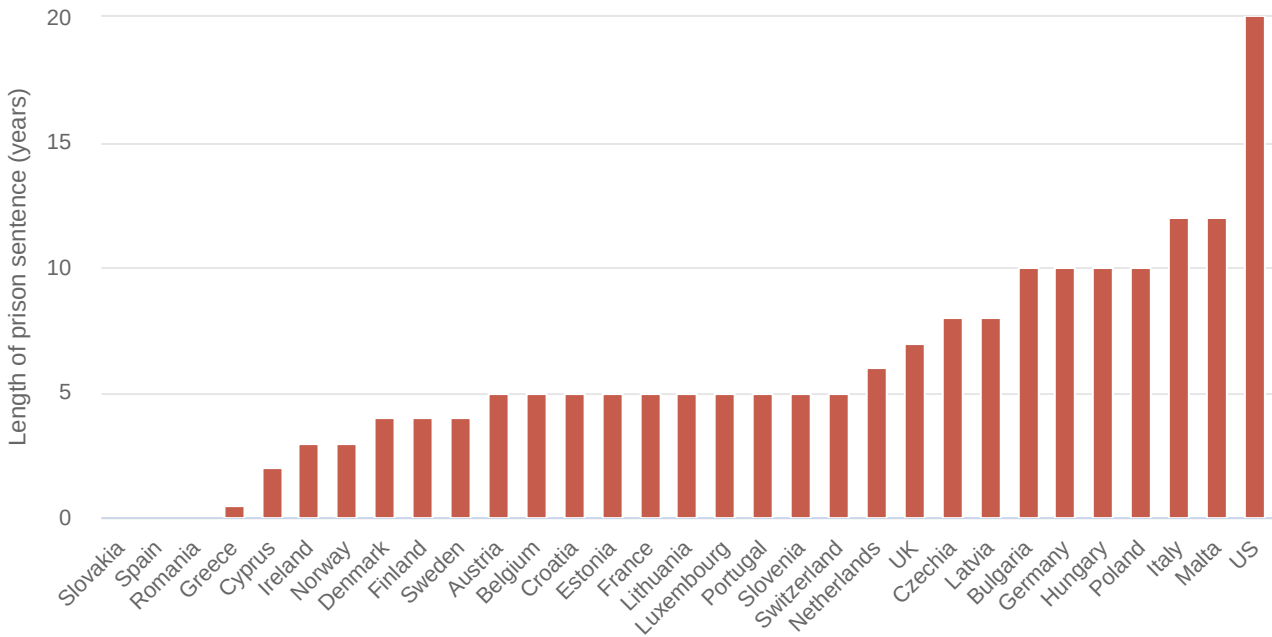
<sup>84</sup> Sanctions Act, § 4 (*LOV-2021-04-16-18 Sanksjonsloven*).

<sup>85</sup> Based on data from 2021 and subject to any changes to national criminal codes introduced since then:



imprisonment.<sup>86</sup> [Eversheds Sutherland Global Sanctions Guide](#) (accessed 16.09.2023). In the US, prison sentences may be imposed for up to 20 years (for each violation). The maximum fine that can be imposed on individuals, either as a criminal or administrative penalty, also varies greatly, ranging from the equivalent of EUR 1,200 to several million (in the US, criminal penalties for individuals may be up to USD one million per violation).

### Maximum sentences for sanctions violations in EU states, Norway, Switzerland, UK and US



14 member states, as well as the UK and US, also provide for corporate criminal liability for sanctions violations, while 12 member states provide for the imposition of administrative (but not criminal) penalties against corporations for sanctions violations. Maximum fines for corporations have historically ranged from the equivalent of EUR 133,000 to EUR 37.5 million.<sup>87</sup> In the US, fines of several billion US dollars have been levied against companies.

Where a company engages in intentional violations of sanctions, for instance by knowingly purchasing sanctioned Russian-origin products from a third country, this would be more likely to result in a higher monetary penalty than an inadvertent violation of the same nature. Other aspects that might serve to increase the severity of a penalty in a given case includes especially egregious and/or repeated violations, as well as not having in place (adequate) preventive systems or procedures.

<sup>86</sup>

<sup>87</sup> See European Commission proposal for a Directive on the definition of criminal offences and penalties for the violation of Union restrictive measures (COM (2022) 684 final).



The dearth of enforcement practises (as described in section 4.5 below) means there is limited basis for an assessment of which legal framework (if any) is the most effective in deterring sanctions violations. Typically, however, the general preventive effect depends on both the severity of punishment (e.g. length of prison sentences and size of fines) and the detection risk as well as enforcement / conviction risk. The form of guilt (guilt criterion) required for criminal liability can also have an impact in this regard. Where liability can be imposed for negligent acts, (as opposed to intentional acts), the perpetrator is for example likely to take this into account in assessing enforcement / conviction risk. Similarly, for corporate liability, the deterrent is likely stronger where companies can be held strictly liable, including for anonymous or cumulative errors, than where liability can only be imposed where guilt can be attributed to one or more specific individuals acting on behalf of the company.

The US exemplifies this in practise: US authorities typically have a range of tools available to take enforcement action against companies (including an expansive jurisdictional reach); in turn, the risk of violating US sanctions is considered especially high (although it should be noted that the US also has higher prison sentences and fines than most other countries (as noted above), which ultimately makes it difficult to assess which is most decisive). The UK's Economic Crime and Corporate Transparency Bill<sup>88</sup>, which is expected to be passed by the end of this year, is an example of prosecutors, at least, considering that a lower accountability (guilt) threshold is decisive in the ability to hold companies accountable for criminal acts.

On top of monetary penalties, some sanctions authorities – most notably in the US – may impose certain administrative requirements on companies, for instance requiring companies to submit to an independent audit, implement specific improvements to their compliance program or impose periodic reporting requirements.

The Commission's proposal for a directive on harmonization of criminal offenses and penalties includes common minimum standards for penalties: depending on the offense, individuals could be liable to a maximum penalty of at least five years in prison and companies could be liable to penalties of no less than 5% of the total worldwide turnover of the company, where the sanctions violation has been committed for the company's benefit (including in circumstances where a lack of supervision and control has made possible the commission of an offense). In a recently adopted draft negotiating mandate, Members of the European Parliament's Civil Liberties Committee proposed that the maximum fine that may be levied on companies should be increased to 15% of overall annual turnover.<sup>89</sup> <https://www.europarl.europa.eu/news/en/press-room/20230703IPR01909/eu-sanctions-new-law-to-crack-down-on-violations> (accessed 07.09.2023).

Article 3 of the proposed directive sets out a list of offenses that, as a minimum, shall be regarded as violations of EU sanctions and thus subject to criminal penalties<sup>90</sup> [EUR-Lex - 52022PC0684 - EN - EUR-Lex \(europa.eu\)](https://eur-lex.europa.eu/eur-lex.do?uri=CELEX:52022PC0684-EN) (accessed 18.09.2023) article 3 (2) and (3) ("**Draft Criminal Offenses Directive**"). (note that

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<sup>88</sup> The Economic Crime and Corporate Transparency Bill will introduce a new "failure to prevent fraud" offense, whereby companies can be held criminally liable if they do not have in place reasonable procedures to prevent fraud conducted by their employees (and provided other objective criteria of the offense are also satisfied).

<sup>89</sup> EU sanctions: new law to crack down on violations, 6 July 2023:

<sup>90</sup> Proposal for a Directive of the European Parliament and of the Council on the definition of criminal offences and penalties for the violation of Union restrictive measures:



member states remain free to adopt more stringent rules, including a more expansive list of criminal offenses). In summary, the relevant offenses are (a) making funds or economic resources available to or for the benefit of sanctioned persons; (b) failing to freeze funds belonging to sanctioned persons; (c) enabling the entry of designated persons into the EU; (d) entering into restricted transactions; (e) trading in restricted goods or services; (f) providing restricted financial services; (g) providing other services that are prohibited under EU sanctions laws; (h) circumventing such measures (defined in the draft directive as (roughly) the concealing of funds or information to the benefit of designated persons and/or failing to cooperate with competent sanctions authorities<sup>91</sup>); and (i) breaching conditions of a sanctions license or authorization granted by a competent sanctions authority.

Notably, the proposal distinguishes between the offenses in (a)-(g) above, and the circumvention and license breach offenses in (h) and (i). All nine offenses shall be subject to criminal penalties when committed *intentionally*. However, the offenses in (a)-(g) may also be committed with *serious negligence* (a lower threshold for criminal accountability). Article 4 of the proposed directive stipulates that inciting, aiding and abetting any of the offenses in Article 3 (a)-(i) shall also be punishable as a criminal offense.

In practice, and of most relevance to the matters discussed in this report, companies that sell restricted products to a Russian person or entity in violation of EU export restrictions, would be committing an offense under Article 3(e) of the proposed directive, even if the sale was via a person or entity in a third country. As outlined above, such acts would, if the proposal becomes law, be subject to the lower threshold of *serious negligence* (or, if the European Parliament's proposed amendments are adopted, just negligence<sup>92</sup> [European Parliament Report on the proposal for a directive of the European Parliament and of the Council on the definition of criminal offences and penalties for the violation of Union restrictive measures](#), 7 July 2023 (accessed 22.09.2023).) (as opposed to intent), and could also be committed by aiding and abetting a primary offender, both of which seem likely to increase the risk that companies (and individuals) could face criminal penalties for indirect sanctions violations.

Even before the new EU-wide harmonization proposal becomes law, however, it is clear that companies that intentionally or negligently violate sanctions are exposed to a significant legal risk, although the practical enforcement risk may vary to a great extent (this is discussed in more detail below). The risk is, naturally, greater in the case of persistent, significant and/or deliberate violations – as opposed to one-off, minor or negligent infractions – although the lack of enforcement precedent to date (as discussed below) means the question of which violations might lead to more stringent penalties is not always clear.

In addition to the legal consequences, and as discussed in more detail in chapter 5 below, sanctions violations also entail significant practical risks for those involved. For companies, such risks include reputational damage, withdrawal of banking facilities or insurance, procurement bans, as well as potential liability for damages for breach of relevant contractual provisions. These risks may also extend – to varying degrees – to the perpetrator company's board members and senior management, as well as owners and investors.

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<sup>91</sup> Draft Criminal Offenses Directive, Article 3(2)(h)(i)-(v).

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#### 5.4.2. Aiding and abetting international crimes

The term 'international crime' is a collective term for certain especially egregious violations of international law, encompassing the four crimes specified in Article 5 of the Rome Statute of the International Criminal Court (the "**Rome Statute**"): the crime of genocide, crimes against humanity, war crimes and the crime of aggression.<sup>93</sup>

The term 'genocide' is defined in Article 6 of the Rome Statute as certain acts "*committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group*". The specified acts include killing or causing serious bodily or mental harm to members of the group, as well as the forcible transfer of children of the group to another group.

The concept of 'crimes against humanity' is defined in Article 7 of the Rome Statute as an exhaustive set of acts committed "*as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack*". The specified acts include murder, forcible transfer of population, torture and "*other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health*".

The UN has clarified<sup>94</sup> <https://www.un.org/en/genocideprevention/crimes-against-humanity.shtml> (accessed 07.09.2023). that crimes against humanity involve either large-scale violence in relation to the number of victims or its extension over a broad geographic area (widespread), or a methodical type of violence (systematic). This excludes random, accidental or isolated acts of violence. In addition, Article 7(2)(a) of the Rome Statute determines that crimes against humanity must be committed in furtherance of a State or organizational policy to commit an attack, although this can be inferred from the totality of the circumstances and need not be explicitly stipulated or formally adopted.

The concept of 'war crimes', as defined in Article 8 of the Rome Statute, includes willful killing, extensive destruction and appropriation of property, willfully depriving a prisoner of war or other protected person of the rights of fair and regular trial and intentionally directing attacks against the civilian population or against civilian objects.

Finally, the crime of aggression is defined in Article 8 bis of the Rome Statute as the planning, preparation, initiation or execution by a head of state (or someone in a similar position) of armed force against the sovereignty, territorial integrity or political independence of another state.

All four crimes require a mental element of willfulness, intent or knowledge. It follows that mere negligence would not suffice, although willful blindness/recklessness – meaning a conscious decision to disregard a substantial risk that the relevant offense could be committed – could, depending on the circumstances, the nature of the offense and the relevant jurisdiction, be sufficient.

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<sup>93</sup> Rome Statute of the International Criminal Court: <https://www.legal-tools.org/doc/7b9af9> (accessed 07.09.2023).

<sup>94</sup> See website of UN Office of Genocide Prevention and the Responsibility to Protect:



Notably, these crimes are subject to universal jurisdiction, which means they are considered so heinous that they may be prosecuted by any state, regardless of where the crime was committed and irrespective of the nationality of the perpetrator or victim.

In March 2023, the UN Independent International Commission of Inquiry on Ukraine (the "**UN Commission**") (which was established on 4 March 2022) issued a report with findings that Russian authorities have committed war crimes in Ukraine, including attacks on civilians and energy-related infrastructure, willful killings, unlawful confinement, torture, rape and other sexual violence, as well as unlawful transfers and deportations of children.<sup>95</sup> [https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/coiukraine/A\\_HRC\\_52\\_62\\_AUV\\_EN.pdf](https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/coiukraine/A_HRC_52_62_AUV_EN.pdf) (accessed 07.09.2023). The UN Commission further noted that some of these acts may also amount to crimes against humanity.

Also in March 2023, the ICC issued arrest warrants against Vladimir Putin and Russia's Commissioner for Children's Rights, Maria Alekseyevna Lvova-Belova for their alleged responsibility for the war crime of unlawful deportation and transfer of children to Russia from occupied areas of Ukraine (pursuant to articles 8(2)(a)(vii) and 8(2)(b)(viii) of the Rome Statute).<sup>96</sup> <https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and> (accessed 16.09.2023).

Since March 2022, the ICC has also been investigating more generally the extent to which potential war crimes, crimes against humanity and/or genocide may have been committed in the context of the situation in Ukraine.<sup>97</sup> <https://www.icc-cpi.int/situations/ukraine> (accessed 16.09.2023). The crime of aggression is missing from this list because the ICC presently cannot prosecute Russia for the crime of aggression, since Russia is not a state party to the ICC. This has led to the recently opened (as of 3 July 2023) International Centre for the Prosecution of the Crime of Aggression against Ukraine (ICPA), hosted by the European Union Agency for Criminal Justice Cooperation (Eurojust). ICPA's stated purpose is to collect evidence to "*investigate Russia's crime of aggression against Ukraine and facilitate case building for future trials*", both before national and international courts.<sup>98</sup>

The above-mentioned findings, arrest warrants and investigations are of relevance to companies which could become complicit in Russia's criminal acts if they are considered to have actively aided and abetted in a material way the commission of such crimes.

Under customary international law, the offense of aiding and abetting international crimes includes three elements:<sup>99</sup> (1) an international crime (as defined in article 5 of the Rome Statute) has been committed by a principal offender (in this case, Russia); (2) another actor (e.g. a private company) committed an act (e.g. a violation of sanctions) of "*practical assistance, encouragement, or moral support which had a substantial effect*" on the commission of the underlying offense<sup>100</sup> (in this case, Russia's ability to commit the

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95 Report of the Independent International Commission of Inquiry on Ukraine, 15 March 2023:

96 ICC press release, 17 March 2023:

97 ICC-01/22, 'Situation in Ukraine':

98 European Commission press release, 3 July 2023, 'Ukraine: International Centre for the prosecution of Russia's crime of aggression against Ukraine starts operations today' (accessed 16.09.2023).

99 International Criminal Tribunal for the Former Yugoslavia, *Furundzija*, Case No. IT-95-17/1-T.

100 *Ibid.*, paragraphs 191, 236.



international crime); and (3) the other actor (e.g. the company) knew that their act would assist or had the substantial likelihood of assisting the commission of the underlying offense.

Following the UN Commission's findings that Russia has committed war crimes (and potentially also crimes against humanity) in Ukraine, and in light of the other ongoing efforts to hold Russia accountable for various international crimes, it is not unthinkable that persons engaged in (direct or indirect) violations of sanctions against Russia could be considered to aid and abet Russia's war efforts, and thus also its war crimes (and possibly other international crimes). That being said, the threshold for considering that a company's act of violating sanctions has aided and abetted Russia's war crimes would likely be high (and even higher for crimes against humanity and genocide, which would additionally require sustained or systematic violations or circumvention, although see the case of French company Lafarge below). There is ongoing debate in academic international law circles around whether, in addition to the knowledge requirement, there is also a requirement that the aider and abettor had a *purpose* or *intention* to facilitate the underlying crime.<sup>101</sup> <https://www.hrw.org/reports/2004/ij/icty/6.htm> (accessed 16.09.2023); for a consideration of the academic debate, see e.g., S. Michalowski, 'The "mens rea" standard for corporate aiding and abetting liability – conclusions from international criminal law', *UCLA Journal of International Law and Foreign Affairs*, Vol. 18, No. 2 (Spring 2014), pp.237-274. If so, this would clearly serve to heighten the threshold for liability, as it would in most circumstances likely be difficult to demonstrate that a company that seeks to profit from sanctions violations has also had an intention to facilitate war crimes or other international crimes.

Of more immediate relevance to companies, however, will be the liability threshold for aiding and abetting under the national laws of countries where they operate. A number of European civil law countries, for instance, do not require more than deemed knowledge (e.g. willful blindness / recklessness) to impose criminal liability for complicity / aiding and abetting an offense.

An illustrative example is the case against the French company Lafarge, which continued its operations in regions invaded by ISIS following the terrorist organization's rise in 2013/14. In 2016, the company was accused of financing terrorism and of complicity in (aiding and abetting) crimes against humanity. Under French law, aiding and abetting only requires knowledge, not intent/purpose. In a preliminary procedural ruling, the French Supreme Court (*Cour de Cassation*) considered whether the threshold should be different in the context of crimes against humanity, but rejected this contention, finding that it was sufficient that the aider and abettor (in this case Lafarge) was aware that the main perpetrators (here, ISIS) were committing or would commit crimes against humanity, and that the company (Lafarge) through its actions, was facilitating the preparation or execution of such crimes.<sup>102</sup> [https://www.eurojust.europa.eu/sites/default/files/assets/21.09.07.\\_cour\\_de\\_cassation\\_decision.pdf](https://www.eurojust.europa.eu/sites/default/files/assets/21.09.07._cour_de_cassation_decision.pdf) (accessed 07.09.2023).

In May 2022, the Court upheld the charges against Lafarge for complicity in crimes against humanity committed by ISIS.<sup>103</sup> <https://www.doughtystreet.co.uk/news/paris-court-appeal-confirms-charges-against-french-multinational-lafarge-complicity-crimes> (accessed 07.09.2023).

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<sup>101</sup> For a summary of relevant case law on either side (i.e. requiring specific intent versus knowledge or awareness only) see Human Rights Watch, 'Case Law of the International Criminal Tribunal of the Former Yugoslavia (February 2004):

<sup>102</sup> Appeal No 19-87.367, Court of Cassation, 7 September 2021:

<sup>103</sup>



Also of interest are a number of investigations into the French bank, BNP Paribas, by French prosecutors. The first, opened in 2017, examined allegations of complicity in genocide against Tutsis in Rwanda, specifically that USD 1.3 million had been transferred by BNP Paribas to a South African arms dealer to finance the purchase of weapons for genocide perpetrators, in violation of a UN arms embargo. BNP Paribas is alleged to have authorized the funds transfer to the Hutu regime in June 1994.<sup>104</sup> <https://www.asso-sherpa.org/involvement-of-the-bnp-paribas-in-the-tutsi-genocide-in-rwanda-opening-of-the-legal-inquiry-and-nomination-of-an-investigation-judge> (accessed 07.09.2023). The matter is still ongoing.

The second investigation, opened in August 2020, looks at allegations that BNP Paribas was complicit in the Sudanese government's torture, genocide and crimes against humanity in the period from 2002 to 2008.<sup>105</sup> <https://www.fidh.org/en/issues/international-justice/judicial-investigation-opened-into-bnp-paribas-role-in-atrocities-in> (accessed 07.09.2023). These allegations are based on a settlement from 2014, whereby the bank pleaded guilty to evading US trade embargoes on Sudan by acting as Sudan's "de facto central bank" and processing billions of dollars' worth of transactions on behalf of sanctioned Sudanese entities.<sup>106</sup> <https://www.justice.gov/usao-sdny/pr/bnp-paribas-agrees-plead-guilty-conspiring-process-transactions-through-us-financial> (accessed 07.09.2023). This matter too, remains ongoing.

The cases illustrate the gravity of the risks companies could face when they violate sanctions. Although a single act of inadvertent violation of sanctions would be unlikely to result in a charge of complicity in war crimes or crimes against humanity, the Lafarge and BNP Paribas cases show the very real possibility that a company engaged in persistent, systematic and/or large-scale violation (or circumvention) of sanctions against Russia could be, depending on the context and nature of the sanctions being violated, found liable for aiding and abetting Russia's criminal acts. A conviction of (or settlement by) a company for violating EU sanctions on exports to Russia, for instance by exporting dual-use products or technology to third countries, might thus serve to underpin a criminal indictment for complicity in war crimes.

There are also examples of individuals that have been found guilty of serious human rights violations as a result of sanctions violations. Frequently, these individuals are owners, chief executive officers or board members of companies involved in such violations.

One example is the prosecution in the Netherlands of a Dutch national for complicity in war crimes through the sale of arms to Liberia in the period 1999-2003, in violation of UN and EU sanctions. At the time, the individual was the owner and president of two logging companies in Liberia. The prosecution claimed that by facilitating the import of arms into Liberia, the relevant individual – through his companies – violated the arms embargo and thus became an accomplice in war crimes committed with those weapons.<sup>107</sup> <https://internationalcrimesdatabase.org/Case/887> (accessed 07.09.2023). After several rounds of appeals culminating in a case before the Supreme Court of the Netherlands, the individual was finally convicted in December 2018 (albeit *in absentia*, having fled to South Africa) and sentenced to 19 years' imprisonment for illegal weapons trafficking and complicity in war crimes through his "*active and conscious*

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contribution to the war operations".<sup>108</sup> <https://uitspraken.rechtspraak.nl/#!/details?id=ECLI:NL:HR:2018:2349> (accessed 07.09.2023).

A second example, once again from France, is the indictment in June 2021 of four executives of French surveillance companies Amesys and Nexa Technologies, for alleged complicity in, respectively, torture in Libya and enforced disappearance in Egypt.<sup>109</sup> <https://www.fidh.org/en/region/north-africa-middle-east/egypt/q-a-surveillance-and-torture-in-egypt-and-libya-amesys-and-nexa> (accessed 07.09.2023). The two companies allegedly supplied surveillance technology to the authoritarian regimes of Muammar Gaddafi in Libya (in 2007) and Abdel Fattah al-Sisi in Egypt (in 2014), which in turn was used by both regimes to target, arrest and suppress opponents.

Although exports of the relevant technology to Libya and Syria, respectively, was not at the time restricted by EU sanctions or export control regulations, the indictment suggests that the barrier to prosecuting companies and/or their executives for war crimes (and quite possibly other international crimes) is lower than it once was.

Another illustrative case is the trial that recently kicked off in Sweden against former executives of a Swedish oil company, for alleged complicity in war crimes in Sudan between 1999 and 2003.<sup>110</sup> [Business and Human Rights Resource Centre, 'Sweden: Lundin Energy trial over alleged complicity in war crimes in Sudan set for September 2023'](#) (accessed 17.09.2023). The former CEO and Chairman of the Board are both accused of asking Sudan's government to provide security at the site of one of the company's exploration fields, which – the prosecution claims – later led to aerial bombings, killing of civilians and burning of entire villages.<sup>111</sup> [The Guardian, 'Sudan war crime trial of former oil firm executives starts in Sweden'](#), 5 September 2023 (accessed 17.09.2023). Again, although the case did not involve a violation of sanctions, it is indicative of the increasingly heightened risk facing companies that are seen to assist, support or collaborate with regimes or non-state actors that have been deemed guilty of one or more international crimes.

## 5.5. Enforcement practises

According to the Genocide Network, very few individuals or corporations responsible for sanctions violations in the EU are effectively held accountable, although in a number of member states, a rising trend is increasingly being observed regarding both the number of enforcement actions launched and the rise in penalties imposed.<sup>112</sup> [https://www.eurojust.europa.eu/sites/default/files/assets/genocide\\_network\\_report\\_on\\_prosecution\\_of\\_sanctions\\_restrictive\\_measures\\_violations\\_23\\_11\\_2021.pdf](https://www.eurojust.europa.eu/sites/default/files/assets/genocide_network_report_on_prosecution_of_sanctions_restrictive_measures_violations_23_11_2021.pdf) (accessed 07.09.2023). A similar pattern (from a similar starting position) can be seen in the UK<sup>113</sup> <https://sanctionsnews.bakermckenzie.com/blog-series-sanctions-enforcement-around-the-g7-the-uk->

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112 Genocide Network, Prosecution of sanctions (restrictive measures) violations in national jurisdictions: a comparative analysis, 2021, p. 4. An overview of the relevant legislation from EU member states and Network Observer States is provided in the annex to the expert report:

113 See e.g., Baker McKenzie blog post on UK sanctions enforcement:



[perspective/](#) (accessed 07.09.2023). and Norway.<sup>114</sup> <https://e24.no/naeringsliv/i/zEbBl4/ud-bekrefter-har-anmeldt-flere-sanksjonsbrudd-til-pst> (accessed 07.09.2023). It should be noted, however, that a full comparison is difficult, since many sanctions authorities do not publish details of their enforcement actions.

In the UK, as one of the more transparent jurisdictions, enforcement actions taken by OFSI are published on the UK government's website.<sup>115</sup> <https://www.gov.uk/government/collections/enforcement-of-financial-sanctions> (accessed 07.09.2023). To date, OFSI has taken action against a total of only nine companies since its establishment in 2016. Two of these relate to violations of the UK's sanctions against Russia. Nonetheless, based on statements and commentary, including pronouncements from OFSI itself<sup>116</sup> and the relatively recent introduction of strict liability enforcement powers (as described in section 4.4 above), we may see a more aggressive approach to enforcement from OFSI going forward. In its Annual Review covering the period April 2021 to August 2022, OFSI noted that it had received 236 breach reports in the first six months of Russia's invasion of Ukraine, and also that it considers itself to be a "world leader in responding to breaches of financial sanctions".<sup>117</sup>

Although the most high-profile enforcement cases, like the ones outlined in section 4.4.2 above, tend to involve companies and individuals that have engaged in direct and egregious violations of sanctions, sanctions authorities are increasingly also looking to target indirect violations, as also noted above. One example of this is OFSI's enforcement action against Tracero Limited in May 2022. The company received a monetary penalty for having violated UK sanctions against Syria by making an indirect payment – through a travel agent based in the United Arab Emirates – to a designated Syrian airline. In its enforcement notice, OFSI stated that it "is not sufficient for any company to rely on a third party to undertake financial sanctions checks on their behalf, and the company committing the breach will be liable for any breach that occurs".<sup>118</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1086645/29.06.22\\_Tracero\\_monetary\\_penalty\\_notice.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1086645/29.06.22_Tracero_monetary_penalty_notice.pdf) (accessed 17.09.2023).

By the same logic, an EU company selling restricted goods to a non-EU company that is not itself subject to EU or other similar sanctions against Russia, could be found liable for an indirect violation of sanctions if the non-EU company subsequently sells the goods to a Russian end customer, even if such a sale was lawful for the non-EU company. As is apparent based on a review of relevant case law, once a sanctions violation has been established, there is a risk that it could be used as a springboard to further indictments (e.g. complicity in war crimes). There is no reason why this would not also hold true for persistent or egregious acts of indirect sanctions violations.

In a number of EU member states, it seems to be customs authorities that are the most active in cracking down on (potential) sanctions violations. In Belgium, as of March this year, 19 reports relating to import and export offenses had been transmitted to the public prosecutor's office and 15 others were being

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<sup>114</sup> See e.g., article from E23 dated 19 May 2023:

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<sup>116</sup> See e.g. OFSI Annual Review, April 2021 to August 2022; and OFSI Guidance on enforcement and monetary penalties for breaches of financial sanctions, updated 31 August 2023.

<sup>117</sup> OFSI Annual Review, April 2021 to August 2022, pages 4 and 11.

<sup>118</sup> OFSI Report of Penalty for Breach of Financial Sanctions, May 2022:





prepared.<sup>119</sup> <https://sanctionsnews.bakermckenzie.com/blog-series-sanctions-enforcement-around-the-world-the-belgian-perspective/> (accessed 07.09.2023). Similarly, Spanish<sup>120</sup> <https://sanctionsnews.bakermckenzie.com/blog-series-sanctions-enforcement-around-the-world-the-spanish-perspective/> (accessed 07.09.2023). and Dutch<sup>121</sup> <https://sanctionsnews.bakermckenzie.com/blog-series-sanctions-enforcement-around-the-world-the-dutch-perspective/> (accessed 07.09.2023). customs authorities are increasingly scrutinizing shipments in an effort to crack down on sanctions violations, while Swiss prosecutors (also as of March this year) had opened 21 criminal proceedings for sanctions violations, most of which related to sanctioned goods.<sup>122</sup> <https://sanctionsnews.bakermckenzie.com/blog-series-sanctions-enforcement-around-the-world-the-swiss-perspective/> (accessed 07.09.2023). Polish<sup>123</sup> <https://sanctionsnews.bakermckenzie.com/blog-series-sanctions-enforcement-around-the-world-the-polish-perspective/> (accessed 07.09.2023). and German sanctions authorities seem to have been particularly active, with the latter recently announcing an increase in investigations into sanctions evasion practices, actioned through a number of unannounced raids on companies.<sup>124</sup> <https://sanctionsnews.bakermckenzie.com/g7-enforcement-coordination-mechanism-germany/> (accessed 07.09.2023).

In contrast with Europe, with its budding (albeit increasing) sanctions enforcement practice, the concept and practice of sanctions enforcement is far more mature in the US, which has seen multiple high-profile enforcement actions and settlements linked to sanctions violations. The US sanctions authorities are also more active in their pursuit of non-US companies, asserting US jurisdiction based on a wide range of factors, including but not limited to the use of US currency and technology, physical presence in the US and involvement of US nationals (wherever located).

The US Department of Justice (DOJ) has also made clear its intention to ensure active enforcement of US sanctions on Russia, with US Deputy Attorney General Lisa Monaco last year stating that the DOJ recognizes "*the critical need to enforce these sanctions with unprecedented intensity*".<sup>125</sup> <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-o-monaco-delivers-keynote-remarks-2022-5gir-live-women> (accessed 07.09.2023). She added that the DOJ is "*pouring resources into sanctions enforcement*" and that the world would continue to see results.

The differing practices of sanctions authorities and, in many countries the lack of past enforcement cases (and/or enforcement data), belie the clear trend towards increasing enforcement action for sanctions violations. The trend is evident from the bullish statements made by authorities, as well as the number of pipeline cases currently stated to be under investigation. When this trend is viewed in conjunction with the UN Commission's finding that Russia has committed war crimes in Ukraine (as well as the ICC arrest warrants and the various ongoing investigations), the extent of violations suggested by, among other things, toll and customs data (as outlined in chapter 3) and countries' increasing willingness to hold companies accountable

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125 Keynote Remarks by Deputy Attorney General Lise O. Monaco at 2022 GIR Live, 16 June 2022:



for serious international crimes (as discussed in this chapter), it is clear that companies involved in persistent and/or deliberate acts of direct and indirect sanctions violations could be exposed to a genuine risk of action being taken against them for complicity in Russia's war crimes.



## 6. Reputational and practical risks<sup>126</sup>

### 6.1. Risk and Responsibility

More than fifty years have passed since Nobel Laureate Milton Friedman in 1970 posited in the New York Times Magazine that “The social responsibility of business is to increase its profits”. Today, most business leaders would agree that much more goes into their duty of corporate responsibility, which defines success just as much as product or service delivery. In today’s open and critical social environment, businesses must earn and protect their reputation among customers, investors, and employees. A strong reputation increasingly determines a company’s competitive edge, just as a damaged reputation may induce massive loss. Between the 2001 Enron failure and the 2023 Mondelez boycott call, the world has witnessed hundreds of cases reminding corporate managers of the key criticality of corporate reputation.

Russia’s attack on Ukraine in February 2022 brought back the era of large-scale war in Europe, and with it the risk to businesses of unwillingly aiding the Russian war effort via trade. In August 2023, a leading newspaper revealed how German components had been found in the type of Russian missile that killed 23 civilian Ukrainians a few months earlier, bringing scrutiny to the relevant CEO over his company’s responsibilities. Any company may at any time become the subject of investigations by media or civil society organizations, which possess increasingly sophisticated tools to uncover corporate activities in investment or trade.

Apart from attracting or alienating customer confidence, reputation determines whether a company may attract future talent. Even more, institutional investors increasingly focus on corporate reputation, ethical standards, and legal compliance, often built into their portfolio engagement standards. Many private investors also consider ethical behavior as an indicator of corporate health: companies that skillfully manage and control their reputation are more likely to manage and control other business areas. Finally, a strong reputation enhances customer loyalty and support in a way that may increase company endurance during times of crisis.

Since Russia’s invasion of Ukraine, prolonged business presence in Russia has often increased domestic pressure on companies to leave, which again has increased the likelihood of an unfair or enforced takeover of assets by Russia - as experienced by Danone and Carlsberg. Apart from business presence, trade with Russia may also pose a direct risk to profits. In many European jurisdictions, companies risk hefty fines for violating sanctions regulations, sometimes under criminal justice. For companies that operate in the United States, grave violations or circumventions may lead to secondary sanctions that close off the US market. Such measures will almost certainly incur significant reputational costs and risks of further deterioration of relations with key stakeholders.

Companies seeking market shares or reconstruction deals in Ukraine will probably find that a record of non-compliance with sanctions may close those future avenues. The Ukrainian government maintains extended sanctions lists and maintains a list of sponsors of war, a de-facto blacklist of companies, including several

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<sup>126</sup> This chapter is written by Rud Pedersen Public Affairs (Kristian Hvilen, Managing partner, and Roger Schjerva, senior adviser, Oslo office).



Western companies. Companies that have supplied dual-use or battlefield-relevant technology to Russia, however indirectly and unwillingly, may face more grave repercussions from Ukraine, including war-crime complicity cases or class action from citizens. The ensuing legal conflicts may haunt a company for several decades, as seen with enduring class action cases concerning South Africa.

Violations of sanctions against Russia are sometimes visible (e.g. through customs and export data, as described in chapter 3 above), and new violations are frequently being exposed by investigative media and activists. Journalists work together across borders to unveil the most complex networks of sanctions circumvention and violation, including well-hidden oligarch assets. Russian journalists in exile add significant expertise and insights to such investigative projects. In addition to hundreds of journalists, a similar number of activists come together to systematically investigate companies, like Mondelez.

The main global campaign addressing companies directly is the B4Ukraine Coalition, which has by late September sent 125 letters to companies pressuring them to decouple from Russia. The Squeezing Putin network organizes activists who systematically investigate hundreds of companies. Beyond these platforms are countless local watchdog groups, such as Boycott Russia, which provide name-and-shame lists to consumers, or the Heartland Initiative which targets producers of digital components. Any Western company may become subject to scrutiny from these or other watchdog networks of activists.

The Heartland Initiative deserves specific mention. This organization mobilizes investors to pressure their portfolio companies to stop violations and circumventions of sanctions, rallying almost 17 % and 20 % of the votes behind critical motions at the latest annual shareholders' meetings of Microchip Technology and Texas Instruments, respectively. They request companies to enhance their due diligence efforts related to business in conflict-affected and high-risk areas.

The rise of sanctions as an international human rights instrument, and the transformative nature of the unprecedented Russia sanctions, are affecting business. Investors may increasingly express expectations about compliance with sanctions regimes. As compliance with sanctions against Russia is exposed to increasing scrutiny from governments, critical media, and civil activist networks, the importance of compliance with legal and customer expectations can hardly be exaggerated.

Corporate responsibilities are not carved in stone; there is no agreement as to exactly what a company's corporate responsibilities are. Just as the exact legal responsibilities may be hard to fully identify, the ethical and moral responsibilities of businesses in wartime are even harder to accurately define and agree upon. Different people will expect different things from corporations - and judge them based on how companies live up to what they personally think should be expected. This makes reputation management and risk mitigation increasingly complex and difficult.

With war and increased international tensions, political processes become more important to business, too. Companies must deal with them not only in the form of new laws and regulations, but in the form of new expectations from political stakeholders alongside customers, employees, and the general public.



## 6.2. Recommendations for business

Faced with the high legal and reputational risks from direct or indirect trade with Russia, companies may improve risk mitigation in the following five ways:

1. Enact and enforce policies that stipulate clear respect for human rights and an understanding of the sanctions regimes and requirements applicable to the company, and communicate those obligations to employees throughout the organization, including sales and other units directly at risk of inadvertent violations. Policy enforcement includes the necessary capacities for compliance monitoring, and a secure environment for internal reporting and whistle-blowing.
2. Be transparent, honest, and sincere in all communication with customers, partners, employees, and other stakeholders. Share information and welcome feedback when issues or difficulties occur. Build robust strategies for open and meaningful communication. Think through, beforehand, how to manage and remedy a situation where the company becomes entangled in networks of sanctioned trade with Russia or Russian entities.
3. Avoid unethical behavior, conduct real and open-ended discussions of the company's moral responsibilities, in addition to strict legal obligations. If possible, invite external experts to take part in such internal deliberations, to bring fresh eyes and perspectives to complex assessments.
4. Perform comprehensive due diligence and monitoring of the company's trade relations with Russia, Russia's neighbors, and countries known to exchange substantial trade with Russia. The need for due diligence increases if the company produces dual-use goods, battlefield-relevant commodities, digital or mechanical technology, and similarly sensitive technologies. High-risk trade partners do not only include Russian companies, but also third-country companies that frequently trade with Russian companies.
5. Remain updated with existing sanctions lists and regulations, or secure advice from external experts that have an updated overview of such frameworks.

Sanctions on Russia are political by nature; they are forged by compromise among political representatives. This has the effect that sanctions constantly change and expand, presenting particular risk to companies that rely on value-chains involving Russia. Therefore, monitoring the political process is of key importance to be able to foresee risks and regulations behind the next corner.

The war in Ukraine is the most defining fight for Europe's future since 1945. Most experts believe the situation will get worse before it gets better. This makes it natural to expect that the sanctions will also become stricter. It will not suffice to answer "we didn't know" or "the rules were so unclear" when confronted in the future with the consequences of past sanctions violations.



## 7. About the contributors

**The Norwegian Helsinki Committee (NHC)** is a human rights organization based in Oslo, Norway, established in 1977, with a geographical focus on Europe, North America and Central Asia. NHC documents human rights violations, works for accountability and support civil society. As part of the Magnitsky Coalition since 2011, we have advocated for the establishment of human rights sanctions regimes across the world and regularly files submissions for targeted sanctions on human rights grounds.

**Corisk** is a Norwegian consulting company helping clients understand and manage country risk in demanding markets. Companies face risks of corruption, expropriation, conflict, sanctions, or severe human rights violations. We offer solid and proven tools to map the full range of country risks. Our leading expertise on the sanctions of Russia has supported European companies, media, and governments with up-to-date insights into regulations, trade data, and violation risk points.

**Wikborg Rein** is a top-tier full-service law firm with headquarters in Norway and offices in London, Shanghai and Singapore, counting more than 260 lawyers globally. Wikborg Rein also has the highest rated compliance practice in Norway, being the only firm ranked both in Band 1 by Chambers Europe and Tier 1 by Legal 500. The compliance team – which has contributed to this report – provides advice within a wide range of compliance topics, spanning analysis, prevention and response work. In the area of sanctions and trade compliance, Wikborg Rein's sanctions team provides multijurisdictional advice to businesses in all sectors, helping them identify and manage sanctions risks, implement sanctions compliance programs and liaise with relevant authorities.

**The Rud Pedersen Group** is a growing full-service strategic communications consultancy with 16 offices in key capitals and a team of over 500 experienced consultants across Europe. Since 2003, we have provided high-quality solutions to our clients' business challenges, needs and goals throughout Europe. We serve more than 300 companies, public entities and organizations. Our expertise lies in connecting legal frameworks, public administration, political campaigns, and strategic communication to help clients achieve their goals.