



# GERMANY

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## IMPLEMENTATION AND LAW

For the German jurisdiction, sanctions are imposed, amended and lifted by the Council of the European Union ('Council') as part of the Common Foreign and Security Policy ('CFSP').

EU sanctions are put into effect following a two-step procedure. First, sanctions are laid down in CFSP Council decisions. In accordance with the division of competences between the EU and Germany, the sanctions agreed by the Council are either implemented at EU or national level. In a nutshell, sanctions affecting the common market, such as asset freezes and export bans of dual-use goods, fall within the competence of the EU. These financial and economic sanctions require implementing legislation in the form of a Council Regulation based on Article 215 TFEU (Treaty on the Functioning of the European Union), which is then directly binding on individuals and companies in Germany. By contrast, the EU is not competent in national security-related matters, cf. Article 4 para. 2 TEU (Treaty on European Union) and Article 346 TFEU. Arms embargoes are thus implemented directly by the German state.

### *Key features of the legislation*

Sections 74 *et seq* Foreign Trade and Payments Ordinance (*Außenwirtschaftsverordnung* – ‘AWV’) implement arms embargoes into German national law. Goods regarded as arms within the meaning of Section 8 para. 1 AWV are listed in Part I, Section A of the Export List (Annex 1 to the AWV). There is an express ban on exports of these armaments to any country that is under an embargo. These countries are listed in Section 74 para. 1 AWV.

For an overview of all country-related embargoes in place, including their substantive coverage, please consult the website of the Federal Agency for Economic Affairs and Export Control (*Bundesamt für Wirtschaft und Ausfuhrkontrolle* – ‘BAFA’).<sup>1</sup>

For a detailed overview of person-related embargoes, please consult the website of *Deutsche Bundesbank* (central bank of the Federal Republic of Germany).<sup>2</sup>

These lists are updated by BAFA and *Deutsche Bundesbank* on a regular basis. However, it cannot be ruled out that delays in their updating may occur.

### *National law/autonomous sanctions*

Germany has no autonomous sanctions regime in place. However, under exceptional circumstances, Germany may impose temporary economic or financial sanctions in order to protect its security and external interests. Section 6 Foreign Trade and Payments Law (*Außenwirtschaftsgesetz* – ‘AWG’) contains an enabling clause for individual intervention by administrative order. The Federal Ministry for Economic Affairs and Energy (*Bundesministerium für Wirtschaft und Energie* – ‘BMWi’), in agreement with the Federal Foreign Office (*Auswärtiges Amt* – ‘AA’) and the Federal Ministry of Finance (*Bundesministerium der Finanzen* – ‘BMF’), may prohibit any activity in foreign trade. Before the adoption of financial sanctions, consultations must be held with the *Deutsche Bundesbank*. The order expires six months after its enactment. Accordingly, Berlin has some time for manoeuvre to push for sanctions in the Council.

Further, German licensing policy may result in a *de facto* arms embargo. Saudi Arabia is a prominent example of the imposition of an arms embargo through the non-issuance of licences.

Germany’s military equipment exports are governed by the Basic Constitutional Law (*Grundgesetz*), the



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War Weapons Control Act (*Kriegswaffenkontrollgesetz* – ‘KrWaffKontrG’), and the AWG in conjunction with the AWW. Decisions are taken in keeping with the Political Principles Governing the Export of War Weapons and Other Military Equipment<sup>3</sup> (‘Political Principles’),<sup>4</sup> the European Council’s Common Position 2008/944/CFSP<sup>5</sup> defining common rules governing control of exports of military technology and equipment (‘EU Common Position’), and the Arms Trade Treaty (‘ATT’).<sup>6</sup>

The EU Common Position forms an integral part of the Political Principles. EU Member States shall assess arms export licence applications against eight criteria. Criterion two of the EU Common Position deals with the consideration of ‘respect for human rights in the country of final destination as well as respect by that country of international humanitarian law’. Accordingly, the humanitarian situation in the country of destination should be assessed on a case-by-case basis when deciding on the issuance of an export licence for arms sales. For the time being though, in general, applications with Saudi Arabia as country of destination are rejected wholesale. This follows a decision made by the German government in October 2018 to stop exporting all arms to Saudi Arabia. Such a ban was already indirectly mentioned in the 2018 coalition treaty between the ruling parties, CDU/CSU and SPD.<sup>7</sup> It came to full legal effect only after the killing of the journalist Jamal Khashoggi in a Saudi mission in Turkey. In September 2019, the German government extended this policy for a further six months, to 31 March 2020. Exceptions may be made for joint export projects.<sup>8</sup> Indeed, the ban had affected joint defence projects such as the Eurofighter and Tornado jets, causing diplomatic tensions with France and the UK.

### *Anti-boycott legislation*

Germany has prohibited boycott declarations since 1992 (Section 7 AWW). Today, with the growing divergence of sanctions approach and policy between the EU and the US, compliance with anti-boycott legislation is increasingly challenging.

An additional layer of complexity was caused by the unclear relationship between Section 7 AWW and the Blocking Regulation (Council Regulation (EC) No. 2271/96, widely referred to as the ‘EU Blocking Statute’). Any breach of Section 7 AWW or Article 5 of the EU Blocking Statute constitutes an administrative offence and can be punished with a fine of up to €500,000. While Article 5 of the EU Blocking Statute prohibits any compliance with US sanctions listed in the Annex to the EU Blocking Statute, Section 7 AWW contains only a prohibition of boycott declarations. Boycott declarations are, for instance, negative declarations of origin which exclude a specific country to be boycotted: for instance, ‘The shipment does not contain goods originating in ...(country)’. Another example of a boycott declaration is a blacklist declaration by which a supplier declares that a company is not on a blacklist associated with a boycotting state.

The relationship between these two regimes moved to the forefront of attention following the reactivation of the EU Blocking Statute. In reaction to the unilateral withdrawal of the US from the Joint Comprehensive Plan of Action (‘JCPOA’), known also as the ‘Iran nuclear deal’, the EU updated the EU Blocking Statute in order to include in its Annex the re-imposed extraterritorial US secondary sanctions.<sup>9</sup>

With the 12th amendment of the AWW,<sup>10</sup> the German federal government in December 2018 clarified the field of application of the prohibition of boycott declarations as laid down in Section 7 AWW. German entities and persons may comply with sanctions imposed by third-party states, as long as the UN, the EU or Germany have also imposed sanctions. The explanatory memorandum<sup>11</sup> to the amendment states

that a political synchronism in terms of objective and content between the sanctions applicable in Germany and the foreign sanctions is not necessary. Moreover, according to the explanatory memorandum, the EU Blocking Statute is sufficient to deal with the extraterritorial scope of US sanctions.

## POWERS AND PROVISIONS

### *Information and access – foreign trade audit*

Section 23 para. 2 AWG provides the legal basis for carrying out a foreign trade audit (*Außenwirtschaftsprüfung*) on the premises of the company concerned. Competence for carrying out the examination lies with the competent main customs office (*Hauptzollamt*) and *Deutsche Bundesbank*. BAFA may send delegates to a foreign trade audit. Such an audit serves the purpose of assessing compliance with export control and sanctions laws.

Though most companies are randomly selected, several factors – such as company size, business activity, export volume, trading with sensitive goods or countries – may cause the company concerned to become the subject of an audit. Information beyond an initial suspicion can lead to the initiation of criminal investigations or investigations under the Administrative Offences Act (*Ordnungswidrigkeitengesetz* – ‘OWiG’), that would terminate the audit.

According to Section 23 para. 1 AWG, the main customs office, *Deutsche Bundesbank* and BAFA can demand information needed to monitor compliance and may require that relevant business documents are presented to them.

Main customs offices and the customs investigation offices (*Hauptzollämter und die Zollfahndungsämter*) have the rights and obligations of police officers pursuant to the provisions of the Code of Criminal Procedure (*Strafprozessordnung*) and the OWiG (Section 21 para. 3 AWG). For instance, customs officers can perform house searches and arrests, confiscate items as evidence, question suspects and witnesses, and carry out telecommunication and mail surveillance. Depending on the particular case, they may need to seek extraordinary legal powers from the public prosecution or the judiciary.

### *Voluntary self-disclosure*

The BMF, in a letter of 14 February 2014,<sup>12</sup> issued guidance on the prerequisites for immunity of prosecution following voluntary self-disclosure (see below for more detail).

### *Licences for activities otherwise prohibited by sanctions*

The process and availability of licences as well as the competent authority depend on the type of sanctions concerned.

As regards the defreezing of funds, licence applications must be sent to *Deutsche Bundesbank* (see contact

details below). For instance, in accordance with Article 4 of Regulation (EU) No. 269/2014 (restrictive measures against Russian Federation), *Deutsche Bundesbank* may authorise the release of frozen funds. Acceptable reasons for such requests are, *inter alia*, the respective funds are necessary to satisfy the basic needs of the blacklisted person, or are intended exclusively for payment of reasonable professional fees.

In general, EU financial sanctions also provide grandfathering clauses.

Pursuant to Article 5 of Regulation (EU) No. 269/2014, *Deutsche Bundesbank* can release funds which are subject to an arbitral, judicial or administrative decision rendered prior to the blacklisting, and the funds are exclusively used to satisfy claims secured by the decision, and not for the benefit of the blacklisted person. Further, in accordance with Article 6 Regulation (EU) No. 269/2014, *Deutsche Bundesbank* may authorise the release of certain frozen funds if a payment by a blacklisted person is due under a contract concluded before the date of the blacklisting.

By employing smart or targeted sanctions instead of total embargoes, the EU generally establishes a graduated regime of legal transactions that continue to be not restricted, are subject to licensing, or are prohibited. Where it is possible and necessary to apply for a licence, please observe the following general principles:

- File your application electronically, via BAFA's online portal ELAN K2.<sup>11</sup> There are no special or separate licensing procedures for items controlled by economic or sectoral sanctions. Companies should submit licence applications as early as possible. Processing will require time.
- Enclose with the application in particular a copy of the contract, full company profile of the consignee, a precise description of the goods concerned with technical documents and an end-use certificate ('EUC'). As regards EUCs, BAFA has published guidance documents on how to identify and fill out the right EUC form.
- Nominate a person responsible for exports (Chief Export Control Officer – *Ausfuhrverantwortlicher* – 'CECO'). In Germany, the nomination and appointment of a CECO is a prerequisite for companies when applying for a licence to export or transfer listed products.<sup>12</sup> As a board member, the CECO can set the necessary 'tone from the top'.

Please note, depending on the particular case, your data and documents could be presented to other national (e.g., BMWi), EU and international authorities.

In addition, each EU sanctions regime has its peculiarities. For instance, before a licence may be granted for the export of goods from the international export control regime of the Nuclear Suppliers Group ('NSG') listed in Annex I to Regulation (EU) No. 267/2012 ('Iran Embargo Regulation'), it must be submitted to the United Nation's Security Council (Procurement Channel). The licence may only be issued after the United Nations Working Group (Procurement Working Group) has approved the granting of a licence.

### KEY AGENCIES

Depending on the subject matter, there are three competent authorities concerned with EU sanctions regulations in Germany:

*Regarding goods, economic resources, technical assistance, brokering services, services and investments*

BAFA, which is an executive agency operating under the jurisdiction of BMWi, is responsible for granting/denying export licences for items and related services subject to EU sanctions. As the central licensing authority under the AWV/AWG, the agency is also charged with issuing licences for exports of military items in Part I Section A and national dual-use items in Part I Section B of the Export List.

**Bundesamt für Wirtschaft und Ausfuhrkontrolle (BAFA)**

Frankfurter Straße 29 - 35  
65760 Eschborn

Tel.: +49 61 96 908 0

Web: [www.ausfuhrkontrolle.info/ausfuhrkontrolle/de/embargos](http://www.ausfuhrkontrolle.info/ausfuhrkontrolle/de/embargos)

*Regarding funds, financing and financial assistance*

In the field of movements of capital and payments, as well as foreign assets and gold, EU financial sanctions are enforced by *Deutsche Bundesbank* (Section 13 para. 2 Nr. 1 AWG). As regards the provision of economic resources, BAFA has authority. *Deutsche Bundesbank* can prohibit certain business transactions, grant individual exemptions from sanctions and release certain frozen funds or economic resources.

Reporting requirements of German residents and financial institutions are regulated in Sections 67 *et seq* AWV. All German banks with foreign operations are legally obliged to report their assets and liabilities with non-German counterparties to *Deutsche Bundesbank*.

**Deutsche Bundesbank**

Servicezentrum Finanzsanktionen  
80281 München

Tel.: +49 89 2889 3800

Web: [www.bundesbank.de/Navigation/DE/Service/Finanzsanktionen/finanzsanktionen.html](http://www.bundesbank.de/Navigation/DE/Service/Finanzsanktionen/finanzsanktionen.html)

*Export controls/sanctions compliance investigations*

The Federal Customs Administration ensures compliance with export controls and sanctions laws. In the case of sanctions breaches constituting criminal or administrative offences pursuant to sections 17 to 19 AWG, investigations are carried out by the main customs offices or the customs investigation offices,

(Section 21 AWG). The latter belong to the Customs Investigation Service (*Zollfahndungsdienst*) comprising the Customs Criminological Office (*Zollkriminalamt*) and eight regional customs investigation offices.

On completing their criminal investigation, customs presents the case file and a report to the public prosecutor's office; the latter will then decide whether there is a strong enough case to proceed to court.

In administrative fine proceedings, the decision is initially taken by the competent main customs office as the administrative authority. Following an objection to the regulatory fine notice, the proceeding is transferred to the competent public prosecutor's office, which then submits the files to the competent local court for decision.

For contact details and area of responsibility of customs authorities please consult:

Web: [https://www.zoll.de/DE/Der-Zoll/Struktur/\\_functions/organisationsplaene\\_faq.html?nn=279098&faqCalledDoc=279098](https://www.zoll.de/DE/Der-Zoll/Struktur/_functions/organisationsplaene_faq.html?nn=279098&faqCalledDoc=279098)

## ENFORCEMENT AND PENALTIES

### *Criminal enforcement*

Intentional breaches of sanctions generally constitute a criminal offence. In accordance with Section 17 para. 1 AWG, a breach of an arms embargo is punishable with a prison sentence of one to 10 years. Section 18 AWG contains provisions on penalties for the breach of EU (financial) sanctions. Such violations are punishable by a prison sentence of up to five years. Please note, Section 18 para. 11 AWG provides for a two-business-day grace period. A breach of EU sanctions measures will not be punishable if it occurred within two business days of the publication in the EU's official journal and the culprit did not know the new EU sanctions.

Liability due to omission is applied to those who have a legal obligation to act. The CECO, in particular, may face criminal liability for the actions of employees. He/she is responsible for the company's export control compliance, including sanctions compliance, and is therefore obligated to intervene in the case of foreseeable and preventable violations of sanctions. Therefore, an effective internal compliance programme ('ICP') is key to minimising liability risks.<sup>15</sup>

**“Resort to self-disclosure for criminal offences is not available. However, cooperative behaviour with the authorities may positively affect sentencing.”**

Resort to self-disclosure for criminal offences is not available. However, cooperative behaviour with the authorities may positively affect sentencing.

### *Administrative enforcement*

A negligent violation of sanctions measures generally constitutes an administrative offence; see Section 19 AWG. As per Section 19 para. 6 AWG, administrative offences are punishable by a fine of up to €500,000. In addition, the conduct may constitute a violation of supervisory obligations pursuant to Section 130 OWiG (administrative offence of a violation of supervisory obligations). The owner of a company as well as authorised persons (the CEO or other managers) may commit an administrative offence if they fail to take appropriate measures (e.g., no ICP or other internal compliance policy is established) to prevent sanctions violations. Section 130 OWiG is a collection standard and applies if the business owner or authorised representative is not personally liable for the actual violation of sanctions laws.

Although German law – at least so far<sup>16</sup> – does not recognise corporate criminal law, administrative liability for companies is provided for in Section 30 OWiG. Fines may be imposed on the company where a person representing the entity has committed a criminal or administrative offence related to sanctions laws. In the case of a criminal offence committed by managers, the company fine may amount to €10 million. If the offence committed by management is deemed to be an administrative offence, the maximum amount of the fine is determined by the particular administrative offence. Such a fine shall be tenfold if the administrative offence refers to Section 30 OWiG (see para. 2 sentence 2 OWiG). This is the case for Section 130 OWiG.

The resort to self-disclosure as per Section 22 para. 4 AWG provides an additional incentive to establish a sound ICP (according to which internal company audits must be carried out in regular intervals). The exculpatory effect of self-disclosure is granted for cases of negligent sanctions violations. Immunity may not be claimed for violations against arms embargoes.

The following non-exhaustive examples for procedural violations of EU sanctions regulations are covered by the possibility of self-disclosure:

- Not transmitting information or not doing so correctly, fully or in time (e.g., Article 40 para. 1 of the Iran Embargo Regulation);
- Not submitting a prior notification or not submitting it correctly, fully, in the prescribed fashion, or in time (e.g. Article 2c of Regulation (EU) No. 36/12 concerning restrictive measures in view of the situation in Syria);

**‘German authorities have not (yet) taken as aggressive a stance on sanctions enforcement as their US counterparts.**



- Not retaining a record of transactions or not retaining it for the prescribed period or not providing it or not providing it in time or;
- Not informing a competent body or authority or not informing it in time.

Prosecution as an administrative offence shall not take place under the conditions below:

- The violation is uncovered by in-house controls;
- It is notified to the competent customs office;
- Appropriate measures are taken to prevent a violation due to the same reason.

A notification shall be deemed voluntary if the authorities have not yet launched investigations into the violation. If they have, prosecution may still be terminated according to Section 47 OWIG. The prosecution of administrative offences is governed by the so-called *Opportunitätsprinzip*, according to which prosecution lies in the discretion of the authorities.

### *Civil liability*

Criminal offences by senior managers may represent a breach of duty in the internal relationship towards the company, which can result in the company's management assuming civil liability towards the company. Depending on the case, the legal basis for such claims are Section 93 para. 2 German Stock Corporation Act (*Aktiengesetz*), Section 43 para. 2 Limited Liability Companies Act (*Gesetz betreffend die Gesellschaften mit beschränkter Haftung*) and Section 280 para. 1 German Civil Code (*Bürgerliches Gesetzbuch*).

Furthermore, civil liability of the company towards third parties (investors, business partners, competitors etc.) may occur. Employees who violate sanctions regulations are liable according to the principles of internal compensation for damages and must expect labour-related consequences all the way to termination of employment.

### *Loss of certain privileges/Loss of reputation*

Violations of sanctions may have the effect that the company loses privileges and the quality seals required for a smoother procedure of obtaining export licences and for a simplified customs clearance procedure. In the worst case, the company may be banned from engaging in commercial activities on the grounds of unreliability (Section 35 German Code of Trade and Commerce (*Gewerbeordnung*)). In addition to the legal implications, violations of sanctions law risk causing damage to business reputation.

### *Enforcement in practice*

German authorities have not (yet) taken as aggressive a stance on sanctions enforcement as their US counterparts. Still, German business must be able to adapt quickly to changing situations in the face of globalisation and the unfortunate escalation of crises throughout the world. Further enhancement of the cooperation between BAFA and customs with regard to risk-focused investigation of export transactions by customs offices is expected.

## Links and Notes

- <sup>1</sup> Available at:  
[https://www.bafa.de/SharedDocs/Downloads/DE/Aussenwirtschaft/afk\\_embargo\\_uebersicht\\_laenderbezogene\\_embargos.pdf;jsessionid=9F41BAB90AEE20616FBA6D00A3E363D4.1\\_cid387?\\_\\_blob=publicationFile&v=4](https://www.bafa.de/SharedDocs/Downloads/DE/Aussenwirtschaft/afk_embargo_uebersicht_laenderbezogene_embargos.pdf;jsessionid=9F41BAB90AEE20616FBA6D00A3E363D4.1_cid387?__blob=publicationFile&v=4) (in German, last accessed on 7 July 2019).
- <sup>2</sup> Available at: <https://www.bundesbank.de/de/service/finanzsanktionen/sanktionsregimes> (in German, last accessed on 7 July 2019).
- <sup>3</sup> In general, the responsibility for issuing licences for war weapons exports lies with BMWi. It decides on applications to export war weapons in agreement with the Federal Foreign Office and the Federal Ministry of Defense. Where there are differing views between the ministries involved, or the cases are especially significant, the Federal Security Council usually decides on the issuance or denial of export licences. Under section 6 KrWaffKontrG, applicants have no legal right to the issuance of a licence for the export of war weapons. The export of those military items in Part I Section A of the Export List that are not war weapons (other military equipment) requires ‘merely’ a licence pursuant to Section 8 para. 1 no. 1 AWW.
- <sup>4</sup> Defined and in force since 1982; On 26 June 2019, the German government published the 4th version of the Political Principles adopted in January 2000, available at [https://www.bmwi.de/Redaktion/DE/Downloads/P-R/politische-grundsaeetze-fuer-den-export-von-kriegswaffen-und-sonstigen-ruestungsguetern.pdf?\\_\\_blob=publicationFile&v=4](https://www.bmwi.de/Redaktion/DE/Downloads/P-R/politische-grundsaeetze-fuer-den-export-von-kriegswaffen-und-sonstigen-ruestungsguetern.pdf?__blob=publicationFile&v=4) (in German, last accessed on 7 July 2019). The restriction of criteria and promoting European cooperation, among others, were the objectives pursued by the Federal Government in updating the Political Principles.
- <sup>5</sup> Amended with Council Decision (CFSP) 2019/1560 of 16 September 2019.
- <sup>6</sup> The ATT entered into force on 24 December 2014. Germany is one of the very first signatories of the ATT. The treaty text is available at: <https://www.un.org/disarmament/convarms/att/> (last accessed on 13 July 2019).
- <sup>7</sup> At para. 7041 f., the text of the grand coalition agreement is available at:  
[https://www.cdu.de/system/tdf/media/dokumente/koalitionsvertrag\\_2018.pdf?file=1](https://www.cdu.de/system/tdf/media/dokumente/koalitionsvertrag_2018.pdf?file=1) (in German, last accessed on 7 July 2019).
- <sup>8</sup> See in particular, French Ministry for Europe and Foreign Affairs, Press release – Franco-German Agreement on Defence export controls (14 November 2019), available at: <https://www.diplomatie.gouv.fr/en/country-files/germany/events/article/franco-german-agreement-on-defence-export-controls-14-nov-19> (last accessed on 18 November 2019).
- <sup>9</sup> Commission Delegated Regulation (EU) 2018/1100 of 6 June 2018 entered into force on 7 August 2018.
- <sup>10</sup> Art. 1 of the Ordinance of 19 December 2018 (BAnz AT 28.12.2018 V1).
- <sup>11</sup> Available at: [https://www.bmwi.de/Redaktion/DE/Downloads/XYZ/zwelfte-verordnung-zur-aenderung-der-aussenwirtschaftsverordnung.pdf?\\_\\_blob=publicationFile&v=4](https://www.bmwi.de/Redaktion/DE/Downloads/XYZ/zwelfte-verordnung-zur-aenderung-der-aussenwirtschaftsverordnung.pdf?__blob=publicationFile&v=4) (in German, last accessed on 7 July 2019).
- <sup>12</sup> III B 3 – A 0303/11/10003.
- <sup>13</sup> Register or login at: <https://elan1.bafa.bund.de/bafa-portal/content/registrierung.xhtml;jsessionid=sv1R1c5SjIOSMn-KDKtNFUdBYzRnMvDswgYSF7Oz.vlp63403>.
- <sup>14</sup> This obligation derives from Section 8 para. 2 AWG, no. 2 of the Federal Government’s Principles for Evaluating the Reliability of Exporters of War Weapons and Arms-related Products of 25 July 2001 (Grundsätze der Bundesregierung zur Prüfung der Zuverlässigkeit von Exporteuren von Kriegswaffen und rüstungsrelevanten Gütern), BAnz. P. 17177.
- <sup>15</sup> See BAFA, Internal Compliance Programmes – ICP. Company-internal export control systems of March 2018 (2nd edition), available at:  
[https://www.bafa.de/SharedDocs/Downloads/DE/Aussenwirtschaft/afk\\_merkblatt\\_icp\\_en.pdf?\\_\\_blob=publicationFile&v=3](https://www.bafa.de/SharedDocs/Downloads/DE/Aussenwirtschaft/afk_merkblatt_icp_en.pdf?__blob=publicationFile&v=3) (last accessed on 7 July 2019).
- <sup>16</sup> After years of discussion, late August 2019, the Federal Ministry of Justice and Consumer Protection circulated a draft Corporate Sanctions Act (*Verbandssanktionengesetz*) to all federal ministries. The grand coalition agreement (referenced at note 7) contains extensive provisions on corporate sanctions for infringements (at para. 5859 et seq).
- <sup>17</sup> Available at: [https://www.bafa.de/DE/Aussenwirtschaft/Ausfuhrkontrolle/ausfuhrkontrolle\\_node.html](https://www.bafa.de/DE/Aussenwirtschaft/Ausfuhrkontrolle/ausfuhrkontrolle_node.html); In English language: [https://www.bafa.de/EN/Foreign\\_Trade/Export\\_Control/export\\_control\\_node.html;jsessionid=4008D82559FA3041245118F2DD5DD6E5.1\\_cid378](https://www.bafa.de/EN/Foreign_Trade/Export_Control/export_control_node.html;jsessionid=4008D82559FA3041245118F2DD5DD6E5.1_cid378).
- <sup>18</sup> D +49 06196 908-1870 (Monday to Friday: 9 am to 1 pm).
- <sup>19</sup> D +49 06196 908-1237 (Monday to Friday: 9 am to 1 pm).

Two cases in relation to the EU sanctions regime against Russia illustrate how important it is for German businesses to remain vigilant on sanctions development and maintain robust best practice compliance policies.

- Germany – one of Russia’s closest trading partners in the EU with more than 6,000 German businesses engaged in Russia before the imposition of EU sanctions in 2014 – adopted a harder line than some expected on enforcement of EU sanctions. Rheinmetall AG was required to issue a profit warning after BMWi withdrew the export licence for a contract (worth over €100 million) to supply Russian forces with a combat-simulation centre. In so doing, it can be argued that Germany exceeded EU sanctions provisions, which did not proscribe application to existing contracts. The arms embargo against Russia was part of the sanctions measures adopted in July 2014 after Malaysia Airlines Flight MH17 was downed in eastern Ukraine (Council Decision 2014/512/CFSP). France, instead, wavered over whether to honour a contract for the sale of two Mistral helicopter-carriers to Russia until 2015.
- Siemens received credible information in 2017 that Siemens’ Russian customer had allegedly brought four gas turbines intended for a project in Russia to Crimea – despite the substantial restrictions on economic exchanges with the territory in place. Siemens sued its customer in Russia to get the sales contract cancelled, but the case was dismissed in several instances. Meanwhile, the Hamburg public prosecutor initiated criminal proceedings against Siemens’ employees.

## OUTREACH

BAFA has published several resources concerning export control compliance, which also cover sanctions compliance.<sup>17</sup> For goods-related queries on the sanctions against Iran<sup>18</sup> and Russia,<sup>19</sup> BAFA has set up a hotline.

Moreover, and in our experience, BAFA’s (specialist technology) staff are most willing to discuss on an informal basis the technical specifics of goods (‘know your product’) and whether the intended export is subject to licensing or prohibition.

As regards events, BAFA (co)-hosts the so-called Export Control Day (*Exportkontrolltag*) and the Information Day on Export Control (*Informationstag Exportkontrolle*). These major yearly events, which feature leadership from German and foreign authorities, the EU Commission, and foreign governments, are designed to inform attendees of current developments in foreign trade policy, export control and sanctions laws.

Further, BAFA collaborates with various chambers of industry and commerce throughout Germany by hosting joint information events on current issues relating to export control and sanctions legislation. To complete its activities in this sphere, the agency participates in working groups organised by the Federation of Germany Industry (‘BDI’).

Likewise, BAFA officials attend information events and sessions related to sanctions compliance hosted by various trade associations (including the German high-tech industry association SPECTARIS, the German Association of the Automotive Industry (‘VDA’) and the Mechanical Engineering Industry

Association ('VDMA'). These forums and symposia provide a platform for the exchange of ideas and information.

## POLITICAL FACTORS

EU sanctions have to be approved by all Member States. Much of what is done in EU foreign policy is the result of an agreement among the UK, France and Germany. The EU's sanctions regime against Iran is a prime example. While Germany is not a permanent member of the UN Security Council, thanks to its economic weight, it is a global player, a role it exercised during the negotiations of the JCPOA as part of the EU 3. Today, the EU 3, represented by the ambassadors of France, the UK and Germany, aims to reassure Teheran about EU commitments in the JCPOA. The political symbol for these efforts is the much-touted Instrument in Support of the Trade Exchange ('INSTEX'). For the time being, German business rightly doubts that these efforts will effectively shield any Iran business from the severe consequences of US sanctions.

The UK's departure from the EU will inevitably result in a shift in the informal power politics of the EU. We may see a resurgence and reconfiguration of the Franco-German alliance. However, the German ban on exports of arms to Saudi Arabia, mentioned above, highlights the challenges this alliance faces. Neither Berlin nor Paris can claim senior partner status in this relationship; in tandem, they achieve results.

In February 2015, the leaders of France, Germany, Ukraine and Russia signed the Minsk II Agreement, intended to end fighting in eastern Ukraine and enable a political settlement for the region. For German Chancellor Angela Merkel, 'this is and remains the yardstick for the future of the sanctions'. Although representatives of different Member States have repeatedly complained that EU sanctions against Russia harm their economies, for now the EU stands united. Unity among the EU Member States, and also within Germany, is important for sanctions policy, but it remains fragile.

The case for sanctions against Russia is subject to cross-party debate in Germany. Somewhat routinely, once the date for renewal of EU sanctions approaches, the discussion picks up pace. Hardly surprising, German business would prefer sanctions to be lifted. East German politicians ranging from the CDU to the SPD and Left Party complain that the eastern Länder are hit hardest by the economic fallout. By tradition, the SPD is said to be much more understanding to Russian interests. *Neue Ostpolitik*, the defining political strategy of rapprochement, initiated by SPD Chancellor Willy Brandt in the 1960s, always favoured direct economic ties between Germany and Russia.

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