

## **Proposal for reinforcing of coordination of cooperation within the European Union in the area of enforcement of EU sanctions imposed in connection with the invasion of Ukraine by the Russian Federation**

*(resulting from the Analysis of sanctions in connection with the invasion of Ukraine of the Russian Federation of 23.5.2022 prepared by the Lexperanto Association)*

1. The General Sanctions Regulation (Regulation (EU) No. 269/2014 as amended, as to the date of the abovementioned Analysis) and the specific Sanctions Regulation (Regulation (EU) No. 833/2014, as amended as to date of the abovementioned Analysis) envisage close cooperation between the Financial Intelligence Units of EU Member States (hereinafter referred to as "**FIUs**") in the application of EU sanctions imposed in connection with the invasion of Ukraine by the Russian Federation (hereinafter referred to as the "**Sanctions**"). **In practice, however, this cooperation among the FIUs is in some cases sluggish and does not work as smoothly as it could. Therefore, it should probably be defined in some form of an internal document on cooperation between the European Commission and the Financial Analytical Offices of the Member States of the European Union (hereinafter referred to as "Member State").** In concrete terms, this cooperation and communication could materialise in the following ways:
  - (a) should the FIU of one Member State not reply within the required deadline or within one week on the request for information or cooperation of the FIU of another Member State, the relevant service of the European Commission intervenes in the communication between the FIUs of those Member States in order to increase the pressure on the "non-answering" FIU from the given Member State;
  - (b) should the FIU of one Member State begin to uncover the ownership structure of an entity that could be subject to a general and/or specific sanction Regulation, it should identify and verify that ownership structure up to the beneficial owner(s), regardless of whether the ownership structure can be found also in other EU Member States or outside the EU: proposal of a solution - once the FIU from the relevant Member State completes the disclosure, it should provide the entire uncovered ownership structure to the FIU from the other relevant Member State, i.e. the Member State where there is an entity in the ownership structure in which:
    - (i) it is no longer possible to document the direct share of another entity or entity in which a potentially sanctioned person or entity from a third non-EU Member State holds a direct shareholding, in which it is not clear who has a share<sup>1</sup>, or
    - (ii) the sanctioned person holds a direct shareholding interest<sup>2</sup>.

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<sup>1</sup> Example 1: Company A from Member State A is owned 100 % by Company B from Member State B which is owned by 100 % by Company C from Member State C. A direct 100 % owner of share interest in Company C is not possible to identify. The disclosure of ownership structure of company A ends there with Company C in Member State C. The FIU from Member State A identifies and evidences ownership in Company A as well as in Company B and identifies the existence of Company C.

<sup>2</sup> Example 2: Company A from Member State A is owned 100 % by Company B from Member State B which is owned by 100 % by Company C from Member State C. A direct 100 % owner of share interest

The purpose is to avoid 'transfers' of the ownership structures after it has been partially uncovered once such ownership structure crosses the borders of the Member State whose FIU has begun to unravel the ownership structure of that Member State; in other words, the FAU of the Member State that has begun to uncover the ownership structure should complete the disclosure and only hand over the uncovered ownership structure to any FAO from another Member State<sup>3</sup>.

2. The approach of the FAU in all member states to the enforcement of both Sanctions Regulations should be clarified and "harmonised" in relation to ownership shares within ownership structures located in:
  - (a) in the EU/EEA, which are ultimately controlled and/or owned by sanctioned entities. FIUs should not freeze:
    - (i) shares by seizing or securing relevant documentary documents in a situation where a relevant direct share interest in a legal person or arrangement without legal personality from an EU/EEA Member State is owned and/or controlled by another legal person or arrangement without legal personality from an EU/EEA Member State which, on the one hand, is not directly owned and/or controlled by the sanctioned subject, but on the other hand, is ultimately – through an indirect share interest extending to the third country outside the EU/EEA – owned or controlled by a sanctioned subject, i.e. via a subject from a third country outside EU/EEA<sup>4</sup>;
    - (ii) the payment of profits (by preventing the payment of profits from a legal person or an arrangement without legal personality to a shareholder or shareholder in such a legal entity or arrangement without legal personality) resulting from the shares referred to in the situation described in the previous point (i);
  - (b) outside the EU, which are ultimately controlled or owned by sanctioned entities, FIUs should by contrast freeze:

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in Company C is a sanctioned person. The FIU from Member State A identifies and evidences ownership in Company A as well as of Company B and of Company C up to the sanctioned person.

<sup>3</sup> Example 3: Based on Example 2 above (Company A from Member State A is owned 100 % by Company B from Member State B which is owned by 100 % by Company C from Member State C. A direct 100 % owner of share interest in Company C is a sanctioned person, the FIU of Member State A shall not stop uncovering of the chain of share interest at the moment the share interest chain leaves the border of Member State A and enters Member State B: it shall uncover the whole ownership structure (the chain of shareholding interests), that is, also direct interest in Company B in Member State B and in Company C in Member State C and when it has the whole ownership structure, or as much of it as possible, it shall handover its findings including evidentiary documents to the FIU of Member State C (in our example), where this FIU shall then take the necessary measures.

<sup>4</sup> Example 4: Based on Example 2 above (Company A from Member State A is owned 100 % by Company B from Member State B which is owned by 100 % by Company C from Member State C. A direct 100 % owner of share interest in Company C is a sanctioned person) the 100 % share interest and 100 % profit interest in Company A in Member State A shall not be anyhow frozen by FIU from Member State A and neither shall be the 100 % share interest and 100 % profit in Company B by FIU from Member State B.

- (i) shares by seizing or securing relevant documentary documents in a situation where a relevant direct share interest in a legal person or arrangement without legal personality from an EU/EEA Member State is owned and/or controlled by another legal person or arrangement without legal personality from an EU/EEA Member State which is directly owned and/or controlled by the sanctioned subject, or which is directly owned or controlled by a subject from a third country outside EU/EEA where the latter subject is directly or indirectly owned and/or controlled by the sanctioned subject<sup>5</sup>;
- (ii) the payment of profits (by preventing the payment of profits from a legal person or an arrangement without legal personality to a shareholder or shareholder in such a legal entity or arrangement without legal personality) resulting from the shares referred to in the situation described in the previous point (i).

**3. In addition, it should be further clarified what "asset freeze" means in respect of a share interest in:**

- (a) legal entities and legal arrangements without legal personality where such share interest is evidenced by the relevant document in the form a non-public paper document<sup>6</sup>, i.e. a document the record in which performs the transfer of this share interest in these persons (e.g. joint-stock companies and European companies with registered paper shares or certain limited liability companies with share certificates or trusts with lists of shareholders/beneficiaries existing in a paper form): a proposal for a solution – FIUs, where the joint-company company or European company is located, the paper non-public lists of shareholders, which should be deposited in the registered offices of those companies, should be temporarily confiscated, i.e. these lists of shareholders be taken into custody, so that the share interests in those companies concerned cannot be transferred;
- (b) legal entities and arrangements without legal personality where such share interest is evidenced by the relevant document in the form of a publicly available paper or electronic document<sup>7</sup>, i.e. a document the record in which performs the transfer of this share interest in these persons (e.g. certain limited liability companies): a proposal for a solution – the FIUs of the Member States where the limited liability company is located should instruct courts or other public authorities that register the shareholders of these limited liability companies, not to carry out transfers of the concerned share interests held by sanctioned subjects in the limited liability companies (e.g. by rejecting a proposal to amend the registration of the shareholder interest ownership in question in the relevant public register);

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<sup>5</sup> Example 5: Based on Example 2 above and in the light of Example 4 (Company A from Member State A is owned 100 % by Company B from Member State B which is owned by 100 % by Company C from Member State C. A direct 100 % owner of share interest in Company C is a sanctioned person) the 100 % share interest and 100 % profit interest in Company C shall be frozen by FIU from Member State C. The FIU of Member State C shall also freeze the 100 % share interest and the 100 % profit interest in Company C if direct owner of this share interest is a Company D of third country D, which is a non-cooperative country in relation to the aforesaid sanctions application, in which has the 100 % share interest and the 100 % profit interest a sanctioned person.

<sup>6</sup> Example 6: List of shareholders kept by the company, usually in a paper form.

<sup>7</sup> Example 7: An excerpt (electronic or paper based) from a public register kept by a registry court or other competent public authority.

- (c) legal entities and arrangements without legal personality, where such share interest is evidenced by the relevant document in the form of a non-public electronic document recording existence of book-entry share(s)<sup>8</sup>, i.e. a document the record in which performs the transfer of this share interest in these persons (e.g. joint-stock companies and European companies with book-entry shares): a proposal for a solution – the FIUs of the Member States where the company is located, should instruct the central depositaries of securities - including shares (CSDs) or persons keeping records of book-entry shares related to the CSDs in the given country, which register owners of shares in these companies on securities (share) accounts (in whichever form) - not to perform transfers of book-entry shares concerned by not making changes or new entries in securities accounts which they maintain.

#### 4. Finally, it should be clarified:

- (a) how to count the amount of share interest of "more than 50 %"; currently, different Member States use different formulas for counting direct and indirect share interest in legal persons and legal arrangements, which means that the same share interest of the same amount will be subject to aforementioned Sanction Regulations in one Member State and not in another;
- (b) what does "public control over shareholding interest" mean; currently, there is no definition of "control", i.e. control, as well as a definition of "public", i.e. which "ultimate public organisations" from the Russian Federation must have control over a share interest in a legal person or legal arrangement in order to be able to conclude that a given share interest is under "public control";
- (c) how to apply sanctions under both the General and Specific Sanction Regulations to persons who hold a share interest in favour of sanctioned subjects and these persons are so-called "close persons" to the sanctioned subjects, both in relation to legal entities and in relation to trusts and natural persons: as the first cases show, control and/or ownership through "close persons" will be a frequent case of application of Sanction Regulation because sanctioned subject usually transferred their share interest to other persons, who are often persons close to them, in response to the announced sanctions.

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<sup>8</sup> Example 8: An excerpt (or a record) from an electronically maintained security account registering shares and their owners administered by a central securities depository or direct or indirect member of the central securities depository.