The role of Central Banks in the European Union regarding EU Sanctions due to the war in Ukraine

Armin Ahari*

Contents

* Dr. Armin Ahari, BSc. is a Legal Counsel in the Austrian National Bank (*Oesterreichische Nationalbank*, OeNB) (Vienna, Austria). Email: armin.ahari@oenb.at. The views expressed in this publication belong solely to the author and do not reflect those of the OeNB or ESCB. The author would like to thank Rainer Palmstorfer, Lukas Lobnik, Stefan Weihs and Armin Bahensky for their valuable and helpful comments. The publication reflects the legal situation until April 2025.

Abstract

With regard to the preceding destabilizing actions of Russia against Ukraine, the EU had already taken measures in 2014 by enforcing the Council Regulations (EU) 269/2014 and 833/2014. However, since the invasion of Russia in Ukraine in the beginning of 2022, this has resulted in the implementation of an additional seventeen extensive sanctions packages. This publication shall focus on the role of the members of the European System of Central Banks (ESCB) in relation to these sanctions. It is of particular interest how the EU sanctions affected the ESCB in its work, for example in the implementation of the monetary policy framework. A major topic is the handling of Central Bank of Russia's (CBR) reserves and assets by the EU sanctions in light of international law. The EU sanctions may also affect the work of the supervisory authorities. Several EU central banks have specific tasks in the surveillance and enforcement of EU sanctions.

Keywords: EU sanctions, Russia, Central Bank of Russia, European Central Bank, European System of Central Banks (ESCB), monetary policy, scope of sanction policy

A. Introduction

With the start of Russia's war against Ukraine at the beginning of the year 2022, sanctions law moved into the focus of different stakeholders in the European Union (EU) (including the members of the European System of Central Banks [ESCB])[1].[2] The EU (Council of the EU) introduced directly applicable sanctions regulations which where gradually tightened as a primary instrument to economically, in a targeted manner, weaken Russia and certain individuals – who are considered supporters of the war.[3] Although sanctions are not a new instrument and have been imposed on other countries in the past (e.g. Iran and Syria), the EU sanctions against Russia are extensive and affect numerous economic sectors.[4]

This publication focuses on the role of the members of the ESCB with regard to EU sanctions against Russia. The first part gives an overview of the individual

1 The ESCB comprises the ECB and national central banks (NCBs) of all EU Member States, whether they have adopted the euro or not.
2 See for a general overview regarding the EU sanctions against Russia *Ahari/Lobnik*, in: Droschl-Enzi (ed.), pp. 117 et seq.; *Ahari/Lobnik*, ecolex 2023(8), pp. 642 et seq.
3 *Engbrink*, in: Ruhmannseder/Lehner/Beukelmann (eds.), para. 1.
4 These economic sanctions are regulated in Council Regulation (EU) 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, OJ L 271 of 12/9/2014, p. 3 as amended (Council Regulation [EU] 833/2014) and include the prohibition to export certain goods (e.g., dual-use goods, luxury goods, etc.) as well as a prohibition to import certain goods (e.g., wood, gold, steel, oil, etc.).

and sectoral financial sanctions against Russia. The following section shows, which individual and sectoral financial sanctions are especially relevant for the members of the ESCB, given that they are addressees as established entities in the EU to directly applicable EU sanctions regulations. The treatment of the Central Bank of Russia (CBR) and the immobilisation of its assets is of particular interest, and the further confiscation of these assets is discussed in this paper. In a next step, the publication evaluates the role of the supervisory authorities overseeing the compliance of supervised entities with EU sanctions and the effect on their supervisory activity. Finally, a few central banks in the ESCB (e.g., *Oesterreichische Nationalbank* (OeNB), *Deutsche Bundesbank*, *Central Bank of Ireland*, *Banca Națională a României*, *Banka Slovenije*)[5] have a special role in implementing the EU sanctions, since they are the competent authorities for implementing the financial sanctions and supervising the compliance with EU sanctions of certain institutions (e.g. credit institutions).

B. Overview of the individual and sectoral financial sanctions

EU sanctions[6] are an important instrument of the EU's Common Foreign and Security Policy (CFSP) to bring about change in the policies or actions of those against whom the measures are directed, and thus achieve objectives of the CFSP.[7] Directly applicable EU sanctions regulations are always preceded by a CFSP decision of the Council of the EU (Art. 29 TEU).[8] CFSP decisions need a unanimous agreement of the Council of the EU and are in turn implemented by the Council of the EU in the form of regulations, in accordance with Art. 215 TFEU, which are applied directly and harmonized throughout the EU.[9] The EU sanctions regulations against Russia, adopted since 2022, are amendments to Council Regulations (EU) 269/2014[10] and 833/2014, which have been in place since 2014 due to the Russian invasion of Crimea. Since the start of the war against Ukraine in February 2022, the Council of the EU established seventeen sanctions packages that constantly expanded the EU

5 See in this regard the national competent authorities for the implementation of EU restrictive measures (sanctions), available at: https://finance.ec.europa.eu/document/download/803d74d5-84a0-4bf4-a735-30f1fe5ae6dd_en?filename=national-competent-authorities-sanctions-implementation_en.pdf (5/5/2025).

6 The term *sanction* will be used in this publication to refer to an *EU restrictive measure*. The terms are used synonymously throughout the publication.

7 See for the impact of financial sanctions *Drott/Goldbach/Nitsch,* Journal of Economic Behavior and Organization 2024/219, pp. 38 et seq.

8 Council Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (2014), OJ L 229 of 13/7/2014, p. 13 (Council Decision 2014/512/CFSP) and its further amendments.

9 According to Art. 215 TFEU the Council's decision-making quorum is a qualified majority. However, since the two proposals for the CFSP decision and the decision regarding the Council Regulation typically are discussed and adopted together, the requirement for a unanimous agreement in reality also applies for the Council Regulation.

10 Council Regulation (EU) 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, OJ L 86 of 21/3/2014, p. 27 as amended (Council Regulation [EU] 269/2014).

sanctions regulations.[11] The judicial control of these regulations lies with the Court of Justice of the European Union (CJEU) in accordance with Arts. 263 et seq. TFEU and must be based primarily on the wording, system and purpose of the provisions. The role of the European Parliament in this legislative process is limited, since the Council of the EU only needs to inform the European Parliament according to Art. 215 para. 1 TFEU. The procedure does not provide for any explicit consultation of the European Central Bank (ECB). The ECB only needs to be consulted "on any proposed Union act in its fields of competence" (Art. 127 para. 4 TFEU) and "[w]ithin the areas falling within its responsibilities" (Art. 282 para. 5 TFEU). The ECB has so far not been officially consulted on the topic of EU sanctions, however, certain informal cooperation in the field of the expertise of the ECB and the central banks may be provided by the ECB (e.g., on sanctions against the CBR).[12]

C. Application of EU sanctions by EU central banks

The Council Regulations implementing the EU sanctions are directly applicable and thus oblige all EU citizens and legal persons, entities or bodies that have their registered office within the EU or were founded as legal entities in the Union to comply with them.[13] This includes all members of the ESCB. The principle of independence[14] of central banks does not exempt central banks from the obligation to comply with the EU sanctions regulations.[15]

I. Individual sanctions

1. Overview of individual sanctions in Council Regulation (EU) 269/2014

The most severe form of sanctions are targeted individual sanctions. They specifically address certain natural or legal persons, entities or bodies who are attributable to – in case of the sanctions against Russia – the Russian regime or who are to be re-

11 At the same time, EU sanctions against Belarus were extended in response to the country's involvement in Russia's aggression against Ukraine; see Council Regulation (EC) 765/2006 concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine, OJ L 294 of 25/10/2006, p. 25, as amended. This publication, however, focuses on the sanctions against Russia: Council Regulations (EU) 269/2014 and 833/2014.

12 See for further reasoning, e.g., *Zilioli,* in: Zilioli/Bismuth/Thévenoz (eds.), pp. 256, 257.

13 See Art. 17 of Council Regulation (EU) 269/2014 and Art. 13 of Council Regulation (EU) 833/2014.

14 Art. 282 para. 3 TFEU and Art. 7 Statute of the European System of Central Banks and of the European Central Bank (Statute of the ESCB/ECB).

15 *Zilioli,* in: Zilioli/Bismuth/Thévenoz (eds.), p. 259 referring to ECJ, Cases C-11/00 and C-15/00, *Commission v. European Central Bank*, judgment of 3 July 2003, para. 126.

garded as significant sources of funding the war activities.[16] Individual sanctions are regulated in Council Regulation (EU) 269/2014 and imposed on those individuals by listing them in Annex I of this Regulation via Council Implementing Regulations. In addition to the listing of these so-called *designated persons*, the regulations also contain a reasoning for each listing. The designated persons are to be cut off from access to their funds and economic resources in the EU. This is ensured in two ways: Article 2 para. 1 Council Regulation (EU) 269/2014 stipulates a freezing requirement for all funds and economic resources that are attributed to a designated person, also known as an *asset freeze*. Art. 2 para. 2 Council Regulation (EU) 269/2014 provides a prohibition on making funds and economic resources available. This applies to designated persons listed in Annex I and persons associated with them (personal scope of application). It extends to all funds and economic resources that are owned, held or controlled by designated persons (material scope of application).

The "EU Best Practices for the effective implementation of restrictive measures" by the Council of the EU (EU Best Practices) are non-exhaustive recommendations of a general nature for effective implementation of restrictive measures of EU sanctions,[17] including guidance to assess the ownership and control of designated persons. This is specifically relevant for legal persons, which may be directly or indirectly owned or controlled by designated persons. If a legal person is owned or controlled by a designated person, the assets of the legal person need to be frozen as well, and no economic resources or funds shall be made available to this legal person.

In terms of ownership, the relevant criterion is whether a designated person directly or indirectly owns 50% or more of the legal person.[18] The EU Best Practices outline non-exhaustive criteria under which a legal person can be considered as being controlled by a designated person.[19] This can be the case, if, e.g., the designated person has the right or is exercising the power to appoint or remove a majority of the members of the administrative management or supervisory body; the designated person has the right to use all or part of the assets of a legal person or entity, etc. With the update of the EU Best Practices in 2024, several non-exhaustive examples were added illustrating circumstances that may qualify as indications that a designated person has control over a legal person.

16 Art. 3 of Council Regulation (EU) 269/2014 explicitly lists the possible reasons for being listed under Annex I of the Regulation.

17 *Council of the EU,* Restrictive measures (Sanctions) – Update of the EU Best Practices for the effective implementation of restrictive measures, available at: https://data.consilium.europa.eu/doc/document/ST-11623-2024-INIT/en/pdf (5/5/2025).

18 EU Best Practices, para. 63.

19 EU Best Practices, para. 64.

To name a few of these examples:[20]

- A designated person is the largest shareholder of a company compared to other shareholders;
- a transfer of a relevant number of shares in the non-designated legal person to a new owner shortly before or after a person has been sanctioned;
- a new owner is closely connected to the designated previous owner, e.g., a family member or former employee/business partner, and, possibly, the sale price was remarkably low or otherwise atypical;
- an entity is part of a needlessly complex corporate structure, potentially involving entities such as shell companies, limited liability companies and/or trusts linked to a designated person. Some of these entities were set up or changed their identity shortly before or after the adoption of the sanctions regime or the person's designation, and/or have no credible business activity.

By the time the listing of designated persons comes into force, the addressees of the Council Regulation (EU) 269/2014[21] – including central banks – are obliged to freeze any assets owned by designated persons and everything else in their ownership or control. The listing takes place by means of a Council Implementing Regulation,[22] which typically comes into effect on the day of its publication in the Official Journal of the European Union. This means that the assets of a person listed in Annex I must *ex lege* be frozen, and no funds are allowed to be made available immediately from the moment of publication in the Official Journal, without the need for a further national implementing act. To implement the sanctions correctly, the addressees need to know their customers and counterparties and who exercises ownership or control over these entities.

2. Consequences of individual sanctions (Council Regulation [EU] 269/2014) against a counterparty of the ESCB

The individual sanctions may have significant consequences for the operations of the members of the ESCB (including the ECB) and their operations with certain counterparties.

a. Implementation of the Eurosystem's monetary policy framework

In implementing the ECB's monetary policy, the Eurosystem offers a set of monetary policy instruments (e.g., liquidity providing refinancing operations, deposit

20 EU Best Practices, para. 67.
21 Art. 17 of Council Regulation (EU) 269/2014.
22 Each listing is imposed via a Council Implementing Regulation which updates the Annex I in Council Regulation (EU) 269/2014.

facility, etc.) to its counterparties,[23] whereby the Guideline (EU) 2015/510 establishes uniform rules for the implementation of the ECB's monetary policy. The legal relationship between the relevant national central banks (NCB) is established via contractual or regulatory arrangements.[24] The counterparties are obliged to comply with these national contractual or regulatory arrangements implementing the Guideline (EU) 2015/510, which lists harmonised events of default (EoD) categorised either as automatic[25] or discretionary[26] EoDs. Each NCB can, in case an EoD is triggered, suspend, limit or exclude the relevant counterparty with regard to the monetary policy operations provided to that counterparty.[27] In case of an automatic EoD, the NCB is even required to either suspend or exclude the counterparty from open market operations and its access to standing facilities.[28]

If "the counterparty becomes subject to freezing of funds and/or other measures, including restrictive measures, imposed by the Union under Article 75 or Article 215 or similar relevant provisions of the Treaty restricting the counterparty's ability to use its funds", it is regarded as an automatic EoD,[29] meaning that the relevant NCB needs to suspend or exclude a sanctioned counterparty from the abovementioned monetary policy operations. This EoD is necessary to comply with the EU sanctions regulation and the possible listing of counterparties. In such a case, all monetary policy operations conducted with the affected counterparty need to be stopped immediately. By continuing to provide liquidity to that counterparty, the Eurosystem would make funds available to the designated person, which is prohibited under Art. 2 para. 2 of Council Regulation (EU) 269/2014. Additionally, the Eurosystem needs to freeze all funds of the counterparty, meaning that any deposit the counterparty may have with the Eurosystem must be frozen immediately.

Counterparties established in the EU are usually not directly subjected to sanctions under Council Regulation (EU) 269/2014. However, these counterparties could be owned or controlled by a designated person, e.g., a sanctioned Russian credit institution. If a credit institution is not listed in Annex I of Council Regulation (EU) 269/2014 but is owned or controlled by a designated person, the result is the same as if the credit institution was listed itself. The Eurosystem does not

23 See definition in Art. 2 para. 11 of Guideline (EU) 2015/510 of the European Central Bank on the implementation of the Eurosystem monetary policy framework (General Documentation Guideline) ECB/2014/60) (recast), OJ L 91 of 2/4/2015, p. 3 (as amended) (Guideline [EU] 2015/510).

24 See Art. 1 para. 3 of Guideline (EU) 2015/510. For example, in Austria the OeNB is establishing the contractual relationship with the counterparties via the terms and conditions of the OeNB (*Geschäftsbestimmungen der OeNB für geldpolitische Geschäfte und Verfahren)*, which is referring to the provisions of the Guideline (EU) 2015/510; see *OeNB*, Terms and conditions of the OeNB, available at: https://www.oenb.at/en/About-Us/legal-framework/terms-and-conditions-of-the-OeNB.html (5/5/2025).

25 Art. 165 para. 2 of Guideline (EU) 2015/510.

26 Art. 165 para. 3 of Guideline (EU) 2015/510.

27 Art. 166 para. 1 of Guideline (EU) 2015/510.

28 Art. 166 para. 1a lit. a of Guideline (EU) 2015/510.

29 Art. 165 para. 2 lit. b of Guideline (EU) 2015/510.

have any discretion to continue to provide any funds to a sanctioned counterparty,[30] which is owned or controlled by a designated person. Only the existence of a specific exemption or derogation provided by the Council Regulation (EU) 269/2014 would allow the Eurosystem to provide liquidity to the counterparty. Derogations in the sanctions regulations require a decision by the competent sanctions authority, which can only be provided positively after examining the facts of the case. Only an *ex lege* exemption to further provide monetary policy operations to the designated person would allow the continued provision of liquidity to the credit institution owned or controlled by a designated person. This is because the exclusion or suspension of a counterparty needs to take place immediately with its designation, which means that the counterparty would typically encounter a *failing or likely to fail* within a very short time due to the lack of liquidity, since no refinancing operations can be provided and the deposits with the Eurosystem of this counterparty are frozen (NB: Also other actors on the interbank market would be barred from providing funds to such counterparty). Under the current EU regulation, a counterparty owned and controlled by a designated person could only apply for a so-called *firewall* according to Art. 6b para. 5d of Council Regulation (EU) 269/2014. Once established, certificated and assessed, a firewall removes the control exercised by a designated person over the assets of a non-listed EU entity owned or controlled by the designated person and ensures that the latter does not benefit from its relationship with the non-listed EU entity, so that the latter can continue its business activities.[31] The establishment of a firewall is intended to enable EU subsidiaries of a designated person to maintain their business operations despite the designated person owning or controlling them[32] and requires the approval by the competent sanctions authority on a case-by-case basis.

The Council Regulation (EU) 269/2014 also includes specific derogations to release frozen funds or make funds available to certain listed Russian credit institutions and their owned or controlled entities, but only for specific reasons and under strict conditions (e.g., to terminate operations, contracts, or other agreements,

30 *Zilioli,* in: Zilioli/Bismuth/Thévenoz (eds.), p. 260 argues that there is a difference between directly sanctioned banks and those which are owned and controlled by sanctioned non-EU banks. From a practical point this argument is understandable, because this could have a negative impact on the financial stability in the EU. However, the EU sanctions do not differentiate between directly designated persons and owned or controlled legal entities. Therefore, an explicit exemption or derogation in the Council Regulation for the benefit of EU banks that are not themselves sanctioned but owned or controlled by a designated person would be necessary for the Eurosystem to be able to provide liquidity to an EU credit institution in such situation.

31 Recital (3) Council Regulation (EU) amending Council Regulation (EU) 269/2014, OJ L 159 of 23/6/2023, p. 330.

32 See in detail *European Commission*, Guidance Note – Implementation of Firewalls in cases of EU entities owned or controlled by a designated person or entity, available at: https://finance.ec.europa.eu/document/download/6aacaf09-97e5-46c3-ad38-de760f0e8baf_en?filename=guidance-firewalls_en.pdf (5/5/2025).

including correspondent banking relations).[33] Still, such derogations require the approval of the competent sanctions authority, before a transaction can be facilitated.

The events triggered by the listing of *Sberbank* Russia *(ПАО Сбербанк России)* in Annex I of Council Regulation (EU) 269/2014 on 21 July 2022 could be regarded as a possible example of the consequences of terminating monetary policy operations with a counterparty owned or controlled by a designated person.[34] *Sberbank Europe AG*[35] (*Sberbank Europe*), established in Austria, was a fully owned (100%) subsidiary of *Sberbank Russia* with further subsidiaries *Sberbank banka d.d.* (Slovenia) and *Sberbank d.d.* (Croatia). *Sberbank Europe* was therefore owned by a designated person, leading to the freezing of all assets and the prohibition of making funds available to the *Sberbank Europe*. However, *Sberbank Europe* already experienced significant deposit outflows and therefore liquidity outflows after the start of the war (i.e., before its sanctioning on 21 July 2022) due to reputational damage. *Sberbank Europe* was considered a significant institution and therefore under the supervision of the ECB and the resolution competence of the Single Resolution Board (SRB).

On 27 February 2022, the ECB decided that *Sberbank Europe* was failing or likely to fail (FOLTF).[36] On 1 March 2022, the SRB decided, in line with the resolution framework (SRMR), not to place *Sberbank Europe* under resolution and the credit institution should be wound down in an orderly manner according to Austrian law.[37] Therefore, *Sberbank Europe* was not allowed to continue its business operations and a government commissioner was appointed by the Austrian Financial Market Authority (*Österreichische Finanzmarktaufsichtsbehörde,* FMA).[38] As opposed to *Sberbank Europe*, resolution actions (sale of business tool) were taken for the subsidiaries of *Sberbank Europe*, the *Sberbank banka d.d.* (Slovenia)[39] and *Sber-*

33 See for example Art. 6b para. 2d of Council Regulation (EU) 269/2014, whereby the release of frozen funds and making funds available from and to the sanctioned *Alfa Bank*, *Rosbank* and *Tinkoff Bank* can be approved by the sanctions authority which deems this appropriate and "after having determined that such funds or economic resources are necessary for the termination by 26 August 2023 of operations, contracts, or other agreements, including correspondent banking relations […]".

34 See Annex I number 108 of Council Regulation (EU) 269/2014.

35 For details regarding the *Sberbank Europe* case see *Gortsos,* in: Zilioli/Bismuth/Thévenoz (eds.), pp. 281 et seq.

36 *ECB*, 'Failing or Likely to Fail' Assessment of Sberbank Europe AG, available at: https://www.bankingsupervision.europa.eu/ecb/pub/pdf/ssm.FOLTF_assessment_of_Sberbank_Europe_AG~144fd77e46.en.pdf (5/5/2025).

37 *SRB*, Assessment of the conditions for resolution in respect of Sberbank Europe AG, available at: https://www.srb.europa.eu/system/files/media/document/2022-06-10_SRB-Non-confidential-version-of-the-decision-in-respect-of-Sberbank-Europe-AG.pdf?destination=/en/admin/content/media (5/5/2025).

38 Art. 70 para. 2 nos. 2 and 4 of the Austrian Banking Act.

39 *SRB*, Adoption of a resolution scheme in respect of Sberbank banka d.d, available at: https://www.srb.europa.eu/system/files/media/document/2022-06-10%20SRB_Non-confidential-version-of-the-resolution-decision-in-respect-of-Sberbank-banka-d.d._1.pdf (5/5/2025).

bank d.d. (Croatia),[40] and the shares were transferred to the *Nova Ljubljanska Banka d.d.* (Slovenia) and the *Hrvatska Poštanska Banka* (Croatia) respectively. *Sberbank Europe* was wound down in an orderly manner and no insolvency procedure was required. On 21 July 2022, *Sberbank Russia* and, as a consequence thereof, *Sberbank Europe* (then already under liquidation) were sanctioned and all their assets were frozen and funds could no longer be made available. Art. 6b para. 2a of Council Regulation (EU) 269/2014 provided for the possibility to apply for a derogation to release funds and make funds available explicitly to terminate operations, contracts, or other agreements, including correspondent banking relations. However, since *Sberbank Europe* was not allowed to continue its business operations and was wound down from 1 March 2022 onwards, it did not have counterparty status under of Guideline (EU) 2015/510 anymore and had already been excluded by the Eurosystem from any monetary policy operations. Still, all funds, which would have been or were handled by the Eurosystem, were frozen, unless an administrative decision by the competent sanctions authority made it possible to release these funds under specific conditions (Art. 6b para. 2a of Council Regulation [EU] 269/2014). On 15 December 2022, the banking license of *Sberbank Europe* was returned and expired.[41]

By the time of the sanctioning of *Sberbank Russia* and therefore of *Sberbank Europe*, which the former owned, *Sberbank Europe* was already no counterparty for Eurosystem monetary policy operations anymore. Therefore, an exclusion or suspension of the counterparty from the Eurosystem's monetary policy operations on the grounds of being sanctioned was not necessary.

b. Payment Systems (TARGET)

The sanctioning of an individual owning or controlling an EU credit institution as in the case outlined above may also have an impact on the EU credit institution's

40 *SRB*, Adoption of a resolution scheme in respect of Sberbank d.d, available at: https://www.srb.europa.eu/system/files/media/document/2022-06-10_SRB-Non-confidential-version-of-the-resolution-decision-in-respect-of-Sberbank-d.d_1.pdf (5/5/2025).

41 *FMA*, Sberbank Europe AG hat alle Bankgeschäfte abgewickelt – Konzession erlischt rechtswirksam mit 15. Dezember 2022 – Regierungskommissär abberufen, available at: https://www.fma.gv.at/sberbank-europe-ag-hat-alle-bankgeschaefte-abgewickelt-konzession-erlischt-rechtswirksam-mit-15-dezember-2022-regierungskommissaer-abberufen/ (5/5/2025).

access to the Eurosystem payment system TARGET.[42] TARGET is owned and operated by the Eurosystem, where central banks and commercial banks can submit payment orders in euro, which are then processed and settled in central bank money. In TARGET, payments related to the Eurosystem's monetary policy operations as well as bank-to-bank and other commercial transactions are settled.[43]

The Guideline (EU) 2022/912 provides for the requirement for participating and accessing the TARGET-system. According to Art. 15 para. 1 of Guideline (EU) 2022/912, the responsible Eurosystem central bank "shall immediately terminate without prior notice or suspend a participant's participation" if insolvency proceedings are opened in relation to a participant, or a participant no longer meets the access criteria for participation. The respective Eurosystem central bank can also suspend or terminate the participation on the grounds of prudence (Art. 17 of Guideline [EU] 2022/912). The access criteria are defined in Annex I Part 1 Art. 4 of Guideline (EU) 2022/912, according to which credit institutions do not fulfil the eligible criteria, if they are "subject to restrictive measures adopted by the Council of the European Union or Member States pursuant to Article 65 para. 1 lit. b, Article 75 or Article 215 of the Treaty, the implementation of which, in the view of [the responsible central bank] after informing the ECB, is incompatible with the smooth functioning of TARGET".[44] In contrast to the implementation of monetary policy (Guideline [EU] 2015/510), the provisions on TARGET do not provide for an automatic suspension or termination of the participant, if it becomes subject to EU sanctions. Council Regulation (EU) 269/2014 calls for the freezing of assets and the prohibition of making funds available. Still, the Eurosystem does not have a discretionary power in complying with the EU sanctions. Therefore, as with monetary policy operations, access to TARGET also needs to be stopped for the participant owned or controlled by a designated person – unless an *ex lege* exemption or an administrative decision by a competent sanctions authority derogate such operations from the freezing obligation and the prohibition of making funds available.

42 Trans-European Automated Real-time Gross settlement Express Transfer system (TARGET). The Guideline (EU) 2022/912 of the European Central Bank on a new-generation Trans-European Automated Real-time Gross Settlement Express Transfer system (TARGET) and repealing Guideline ECB/2012/27 (ECB/2022/8), OJ L 295 of 16/11/2022, p. 50 (Guideline [EU] 2022/912) establishes to rules to use and set up TARGET. There are other TARGET-services, however, this publication focuses on TARGET. These services consist of TARGET2-Securities (T2S, securities settlement platform), TARGET Instant Payment Settlement (TIPS, instant payment settlement service), which are regulated as well in the Guideline (EU) 2022/912. In the future, a further service will be added with the Eurosystem Collateral Management System (ECMS, system for managing assets used as a collateral in Eurosystem credit operations).

43 See *ECB*, What is TARGET2?, available at: https://www.ecb.europa.eu/paym/target/target2/html/index.en.html (4/5/2025).

44 There are similar provisions in the Guideline (EU) 2022/912 according to which participants, which are subject to restrictive measures are seen as incompatible with the smooth functioning of TARGET and are therefore, e.g., not eligible for intraday credit or autocollateralisation (Art. 10 para. 3 of Guideline (EU) 2022/912).

Moreover, the participants of TARGET need to comply with EU sanctions, since they are addressed by the EU sanctions regulations.[45] This is explicitly mentioned in Annex I Part I Art. 29 para. 3 of Guideline (EU) 2022/912, where participants, when "acting as the payment service provider of a payer or payee, shall comply with all requirements resulting from […] restrictive measures". Likewise, the participants must comply with the prohibition of circumvention[46] and their due diligence obligation to implement the EU sanctions effectively.[47]

II. Sectoral Financial Sanctions (Council Regulation [EU] 833/2014)

In contrast to individual sanctions, sectoral financial sanctions do not target a specific designated person, but essential sectors of the Russian economy. The sectoral financial sanctions in Council Regulation (EU) 833/2014 are intended to restrict capital and payment transactions between Russia and the EU. Specific provisions regarding the sectoral financial sanctions are of special interest for central banks.

1. Prohibition of trading specific securities

Pursuant to Art. 5 of Council Regulation (EU) 833/2014, access to the European capital market is restricted for certain credit and financial institutions in Russia. Accordingly, it is prohibited to directly or indirectly buy or sell transferable securities and money market instruments in relation to certain institutions with certain maturities (depending on the time of their issuance), to provide investment services or ancillary services in connection with the issue or to trade in them in any other way. This ban on security tradings relates primarily to certain Russian state owned or state-related credit institutions.[48] Subsidiaries of these institutions outside the EU and persons acting on behalf of or on the instructions of the group of individuals concerned are also covered by the restrictions. In a similar way, Art. 5a of Council Regulation (EU) 833/2014 prohibits to directly or indirectly purchase, sell, provide investment services for or assistance in the issuance of, or otherwise deal with transferable securities and money-market instruments of Russia and its government, the CBR or legal persons, entities or bodies acting on behalf of or at the direction of the CBR issued after a certain date.

Therefore, the EU central banks (including the ECB) need to take these security bans into account, when executing their investments. The ban is also relevant when taking assets as collateral for monetary policy operations.

45 See *Zilioli,* in: Zilioli/Bismuth/Thévenoz (eds.), p. 261.
46 Art. 9 of Council Regulation (EU) 269/2014.
47 See in more detail, e.g., *Ahari/Lobnik,* in: Droschl-Enzi (ed.), pp. 125 et seq.
48 See Annex III of Council Regulation (EU) 833/2014.

2. Prohibition of providing banknotes to Russia

Article 5i of Council Regulation (EU) 833/2014 established the prohibition to sell, deliver, transfer or export banknotes denominated in an official currency of an EU Member State to Russia or to natural or legal persons, entities or bodies in Russia (including the Government and the CBR) or for use in Russia.[49] This prohibition is intended to prevent foreign exchange transactions in the currencies of EU Member States. According to Art. 5i para. 2, the export of banknotes is only exempted if it is necessary for the personal use of natural persons travelling to Russia or their accompanying immediate family members or for official activities of diplomatic missions, consular posts or international organisations in Russia that enjoy immunity under international law.[50]

The circulation of euro banknotes is conducted by the national central banks of the ESCB, whereby usually credit institutions order banknotes from different national central banks of the ESCB, which then provide the credit institutions with banknotes, typically via money service providers. Credit institutions, as well as any other natural person and legal entity addressed by the Council Regulation (EU) 833/2014, need to comply with Art. 5i of Council Regulation (EU) 833/2014.[51] However, the central banks need to decline the supply of banknotes, if they are of the opinion that this would result in a breach of sanctions on the part of the credit institution.[52]

3. Prohibition of transactions with the Central Bank of Russia (CBR)

According to Art. 5a para. 4 of Council Regulation (EU) 833/2014 "[t]ransactions related to the management of reserves as well as of assets of the Central Bank of Russia, including transactions with any legal person, entity or body acting on behalf of, or at the direction of, the Central Bank of Russia, such as the Russian National Wealth Fund, are prohibited." The foreign exchange reserves of the CBR are therefore immobile and blocked in the EU. In practice, this measure has the effect of an asset freeze within the meaning of Art. 2 para. 1 Council Regulation (EU) 269/2014. The difference in approach is that the assets are not technically frozen, but any transaction related to the management of reserves and assets of the CBR is prohibited. This means that funds cannot be moved, because no EU counterparty is allowed

49 According to *Zilioli,* in: Zilioli/Bismuth/Thévenoz (eds.), p. 261 "the ECB may also restrict exports of banknotes to non-sanctioned third countries when, in the consideration of the ECB, those exports may imply a significant risk of circumvention of the EU restrictive measures".

50 Art. 5i para. 2 of Council Regulation (EU) 833/2014.

51 Art. 13 of Council Regulation (EU) 833/2014.

52 See for example in Austria, Art. 4 para. 7 of the Terms and conditions for the Austrian Settlement & Transaction Interface (ASTI), *OeNB*, ASTI, available at: https://www.oenb.at/en/Payment-Processing/Services-for-Financial-Institutions/Terms-and-Conditions/asti.html (5/5/2025).

to do any transaction with the CBR.[53] These targeted sanctions against the CBR are intended to restrict the possibility of carrying out important monetary policy transactions for Russia (e.g., foreign exchange transactions) that could have a positive and stabilising effect on the exchange rate of the Russian ruble.

Eurosystem central banks can provide reserve management services in euro to (*inter alia*) central banks via the Eurosystem reserve management service (ERMS).[54] The ERMS provider may limit, suspend or exclude a customer from ERMS, if "the customer and/or its reserves are subject to any sanctions or restrictive measures imposed by Union and/or national legislation".[55]

D. Confiscation of immobilised reserves of the Central Bank of Russia (CBR)

The sanctions against the CBR led to legal discussions.[56] One of the most controversial topics in terms of sanctions is the immobilisation of the assets of the CBR and whether or not those assets or parts of it could be used to support Ukraine. Even though an in-depth analysis cannot be provided in this publication, the topic should not be left out, due to its potential future impact on the reserves of central banks overall.

I. Immobilisation of the reserves of the CBR

On 28 February 2022, Art. 5a para. 4 of Council Regulation (EU) 833/2014 was introduced, thereby imposing a transaction ban concerning the management of reserves and assets of the CBR.[57] As a consequence, all reserves and assets of the CBR were immobilised in the EU from that moment onwards.

This leads to the question whether assets of a foreign central bank can be immobilised or frozen without affecting the immunity of central banks. There are two forms of immunity:[58] immunity from jurisdiction and immunity from enforcement.[59] Both kinds of immunity apply to state-owned property, situated in a foreign

53 See regarding the difference of freezing, confiscation, seizing and immobilisation, *Webb,* Study European Parliamentary Research Service, p. VII.

54 Guideline (EU) 2024/1211 of the European Central Bank on the Eurosystem's provision of reserve management services in euro to central banks and countries located outside the euro area and to international organisations (ECB/2024/13) (recast), OJ L 1211 of 3/5/2024, p. 1 (Guideline [EU] 2024/1211).

55 Art. 6 para. 2 lit. b of Guideline (EU) 2024/1211.

56 See for example *Moiseienko*, EJIL 2023/4, pp. 1010 et seq.; critical legal analysis by *van der Horst*, EJIL 2023/4, pp. 1021 et seq.; *Kamminga*, NILR 2023/70, pp. 1 et seq.

57 Council Regulation (EU) 2022/334 concerning restrictive measures in view of Russia`s actions destabilising the situation in Ukraine, OJ L 57 of 28/2/2022, p. 1. On 9 March 2022 with Council Regulation (EU) 2022/394 concerning restrictive measures in view of Russia`s actions destabilising the situation in Ukraine, OJ L 81 of 9/3/2022 the transaction ban on the Russian National Wealth Fund was added.

58 State immunity is customary international law. See, e.g., *Fox/Webb,* p. 2.

59 See in more detail with further references *Webb*, Study European Parliamentary Research Service, p. 5; *Brunk*, in: Zilioli/Bismuth/Thévenoz (eds.), p. 173.

country, including central banks and their property. Immunity from jurisdiction means that a state (as well as its central bank) cannot be sued before the courts of another state. Immunity from enforcement protects a state's property, including the assets of its central bank from any constraint or execution.[60] Therefore, the state's property cannot be subject to execution following a judgement by a foreign jurisdiction's court.[61] However, this immunity does not exceed to constraining the assets of a central bank by actions of legislation or the executive branch, which do not involve the judicial authority. As outlined by *Brunk,*[62] the immobilisation of the CBR's assets by banning any transaction with the CBR are considered as legally sound and not interfering with the immunity of the CBR. According to *Brunk,*[63] sanctioned states or central banks do not argue that the immobilisation or freezing of their assets via an executive or legislative act contradict their immunity.[64] It seems quite paradoxical[65] that even though the same result is achieved (immobilisation or freezing of assets), the used instrument (jurisdiction versus executive act) makes a difference in terms of immunity.[66] It is, however, an outcome of purpose of immunity to prevent one state being convicted by the judgements of another state.[67] Still, it is not the purpose of the law on immunity to restrict the foreign policy

60 The protection does not apply to assets held for commercial purposes, however, the reserves and assets held by a central bank usually are presumed to be of non-commercial purpose and therefore under the protection of immunity, see *Webb*, Study European Parliamentary Research Service, p. 6 and Art. 21 para. 1 lit. c United Nations Convention on Jurisdictional Immunities of States and Their Property (UNCIS), whereby property of central bank is seen as property of a state shall not be considered as property specifically in use or intended for use by the state for other than government non-commercial purposes. See further to the application of immunity to central bank assets *van der Horst*, EJIL 2023/4, pp. 1028 et seq.

61 See concerning the definitions *Brunk*, in: Zilioli/Bismuth/Thévenoz (eds.), p. 174; *Webb*, Study European Parliamentary Research Service, p. 5.

62 *Brunk*, in: Zilioli/Bismuth/Thévenoz (eds.), pp. 175 and 186 et seq.

63 *Brunk*, in: Zilioli/Bismuth/Thévenoz (eds.), pp. 186 et seq.

64 See also *Webb*, Study European Parliamentary Research Service, p. 12; *Moiseienko*, EJIL 2023/4, p. 1008 referring also to Russia invoking the argument of state immunity, however the reaction took half a year. Still no diplomatic steps were taken to object to the freezing see *Kamminga*, NILR 2023/70, p. 9.

65 This paradox situation is referred to by *Webb*, Study European Parliamentary Research Service, p. 12 fn. 110, whereby several commentators who refer to this paradox situation are cited, e.g., *Timor-Leste* in its Questions Relating to Seizure and Detention written submissions. See International Court of Justice, Certain Questions Relating to the Seizure and Detention of Certain Documents and Data (*Timor-Leste v. Australia*), Memorial of Timor-Leste, 2014, para. 5.18.

66 Similar *Kamminga*, NILR 2023/70, p. 6.

67 Other opinion by *van der Horst*, EJIL 2023/4, pp. 1030 et seq. who argues that state immunity is also applicable for executive actions.

options of a state.[68] Either way, the issue of confiscation of a state's assets is in any way "sharply contested"[69] independently of the use of either instrument.

To see the effect of the transaction ban on the CBR's reserves and assets, a provision was introduced in Art. 5a para. 4a of Council Regulation (EU) 833/2014 on 25 February 2023, according to which the counterparties of the CBR are obliged to report data on the CBR's assets and reserves that were immobilised in the respective accounts to the competent sanctions authority of the Member State and to the European Commission.[70]

Apart from the EU, many other countries such as the United States, the United Kingdom, Switzerland, Japan and Canada introduced freezing or immobilisation provisions against the CBR. Leading to an estimate of USD 300 billion of frozen or immobilised assets in those countries and the EU.[71] In the EU, an estimated amount of EUR 200 billion are currently immobilised, more than half of which are cash and deposits.[72] Most assets are held by central securities depositories (CSDs), only smaller amounts are held by commercial and central banks.[73] A total of about EUR 191 billion of these assets are held by a Belgian CSD.[74] A substantial amount of assets has already matured and are therefore cash holdings, a sizeable amount of the remaining assets is held in the form of securities, which will gradually transform into cash holdings as they mature in the next two to three years.[75]

Due to the high amount of assets immobilised in the EU, the discussion whether these assets could be confiscated and made available to Ukraine to finance its reconstruction started at an early point in time.[76] However, such confiscation of the CBR's assets faces several legal obstacles.

68 *Moiseienko*, Seizing Foreign Central Bank Assets: A lawful response to aggression, Working Paper on SSRN (2023) p. 23 summarizing and citing this paradox situation; see, e.g., *Moiseienko*, EJIL 2023/4, p. 1014 with further references to this debate, that the scholars are divided on the subject, if there is a difference in freezing state assets via judicial or an executive act. *van der Horst*, EJIL 2023/4, p. 1025 favours the opinions of several scholars that state immunity also applies to executive action.

69 *Brunk*, in: Zilioli/Bismuth/Thévenoz (eds.), pp. 187 et seq.

70 Council Regulation (EU) 2023/427 concerning restrictive measures in view of Russia`s actions destabilising the situation in Ukraine, OJ L 59 of 25/2/2023, p. I/6.

71 *IISS*, Sanctions on Russia's central bank, available at: https://www.iiss.org/publications/strategic-comments/2023/sanctions-on-russias-central-bank (5/5/2025).

72 *Council of the EU*, Ad hoc Working Party on the use of frozen and immobilised assets to support Ukraine's reconstruction, 10669/23, p. 3. (*Council of the EU*, 10669/23).

73 *Council of the EU*, 10669/23, p. 3.

74 *Steinbach*, How to harvest the windfall profits from Russian assets in Europe, available at: https://www.bruegel.org/analysis/how-harvest-windfall-profits-russian-assets-europe (5/5/2025).

75 *Council of the EU*, 10669/23, p. 3.

76 See possible reconstruction costs of estimated USD 411 billion in *Webb*, Study European Parliamentary Research Service, p. 4.

II. Confiscation of the reserves and/or proceeds of the CBR

1. Legal Obstacles

a. EU Charter of Fundamental Rights

The right to property is established in Art. 17 of the Charter of Fundamental Rights of the EU (CFR). It can be limited according to Art. 52 para. 1 CFR, but such limitations have to be provided "by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others". This right can also be invoked by legal persons that are governmental organisations or state bodies,[77] consequently also by the CBR. The right to property is, however, not absolute and therefore can be limited as long as those *restrictions* "do not constitute, in relation to the aim pursued, a disproportionate and intolerable interference, impairing the very substance of the right so guaranteed."[78] According to *De Gregorio Merino*[79] a confiscation is basically possible, "but only if provided by law – whether under criminal, civil or administrative law – and following a judicial decision. Because such confiscation substantially affects fundamental rights and is of a punitive nature, it should comply with specific legal safeguards and judicial remedies, i.e., with a high threshold of legal protection".

b. Temporary EU sanctions

According to *De Gregorio Merino,*[80] the EU sanctions can – due to their nature of supporting EU foreign policy (Art. 21 TEU) and their aim to bring change in policy of other states – only be of temporary character and can, therefore, not be irreversible. The CJEU pointed out that "freezing measure constitutes a temporary precautionary measure which is not supposed to deprive those persons of their property".[81] However, in this judgement, a specific case of freezing was considered and weighed against the reasoning of limiting the right to property. So, in the end, even confiscation would need to be weighed in a case-by-case manner. Further, the provisions regarding the EU sanctions (Art. 29 TEU, Art. 215 TFEU) do not explicitly provide that sanctions imposed on this legal basis have to be only of temporary nature.

77 General Court, Case T-262/12, *Central Bank of Iran v. Council*, judgment of 18 September 2014, ECLI:EU:T:2014:777, para. 72.
78 ECJ, Cases C-402/05 P and C-415/05 P, *Kadi v. Council and Commission (Kadi),* judgment of 3 September 2008, ECLI:EU:C:2008:461, para. 355.
79 *De Gregorio Merino,* in: Zilioli/Bismuth/Thévenoz (eds.), pp. 193 et seq.
80 *De Gregorio Merino,* in: Zilioli/Bismuth/Thévenoz (eds.), pp. 195 et seq.
81 ECJ, Cases C-402/05 P and C-415/05 P, *Kadi v. Council and Commission (Kadi),* judgment of 3 September 2008, ECLI:EU:C:2008:461, para. 358.

c. Immunity of the property of the CBR

The immunity from enforcement protects the CBR's assets from confiscation. This protection of assets of central banks is explicitly regulated in Art. 21 para. 1 lit. c UNCIS,[82] whereby property of the central bank is regarded as property of a state and shall not be considered as property specifically in use or intended for use by the state for other than government non-commercial purposes. There are no known cases where foreign currency reserves have been subject to enforcement measures.[83] The confiscation of the CBR's assets would be a violation of the international law of state immunity,[84] unless the assets would lose their protection under state immunity rules.[85] This could be the case either by avoidance, justification, evolution or exception.[86]

The term *avoidance* means to avoid the engaging in immunity. Since the immunity from enforcement only protects the CBR from judicial actions, a legislative or executive action without the involvement of any judicial powers is, strictly speaking, not interfering with immunity. This is quite surprising, since the factual result is the same as with the confiscation based on judicial powers.[87] In the past, assets from different central banks were frozen,[88] the confiscation of these assets is another step and will not be as easily accepted, even if it is a legislative or executive action.

The confiscation could also be *justified* by being either a countermeasure or an act of self-defence and therefore being in line with international law.[89] However, the countermeasure needs to be proportionate.[90] Freezing CBR's assets as a countermeasure to Russia's waging war against Ukraine should definitely be seen as a proportionate countermeasure, especially since this would be a non-military response.[91] Still, a confiscation is taking it a step further, but a confiscation of assets as a countermeasure to military action against another sovereign state seems justified. But the EU is not under direct attack by Russia, Ukraine is. Since the EU, and its Member

82 As outlined by *De Gregorio Merino,* in: Zilioli/Bismuth/Thévenoz (eds.), p. 196 with references that the UNCIS although not in force, is increasingly considered to reflect customary international law. According to *Ahmed/Butler,* EJIL 2006/4, p. 776 with further references to the result, that the EU as intergovernmental organisation is subject to international law.

83 *Webb*, Study European Parliamentary Research Service, p. 8 referring to *Brunk-Wuerth,* in: Ruys/Angelet/Ferro (eds.), p. 282.

84 *Webb*, Study European Parliamentary Research Service, p. 11.

85 *Webb*, Study European Parliamentary Research Service, p. 11.

86 *Webb*, Study European Parliamentary Research Service, p. 11.

87 See for further details *Webb*, Study European Parliamentary Research Service, pp. 11 et seq. and p. 16.

88 See above *Brunk*, in: Zilioli/Bismuth/Thévenoz (eds.), pp. 187 et seq.

89 The United States took measures or froze assets of the central banks of Afghanistan, Cuba, Iran, Syria, and Venezuela, see *Moiseienko*, EJIL 2023/4, p. 1012.

90 Art. 51 Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA).

91 *Moiseienko*, EJIL 2023/4, p. 1016; *Kamminga*, NILR 2023/70, p. 7.

States, are not direct injured states in accordance with Art. 42 ARSIWA,[92] they can only justify third-party countermeasures based on Art. 48 ARSIWA. Countermeasures, however, need to be temporary and reversible.[93] The confiscation of assets is neither temporary nor reversible. Still, Art. 54 ARSIWA is leaving room for future developments which are "lawful measures against that State to ensure cessation of the breach and reparation in the interest of the injured state or of the beneficiaries of the obligation breached."[94] The provision refers to *lawful measures* and not *countermeasures* "as not to prejudice any position concerning measures taken by States other than the injured State in response to breaches of obligations for the protection of the collective interest".[95] As outlined by *Kamminga*:[96] "The exceptional circumstances of a war of aggression waged by a permanent member of the Security Council (so that the Security Council is unable to act) combined with the availability of its financial assets on the territory of third states may be regarded as sufficient ground for such a 'future development' anticipated by the [International Law Commission]".[97] Furthermore, Art. 54 ARSIWA explicitly refers to reparation, which is the objective of using CBR's assets. To be a lawful countermeasure the applied action needs to induce compliance with international law and to cease the unlawful behaviour of the infringing state.[98]

Another way to argue against the protection of the property of the CBR by immunity could be the *evolution* of international law, thereby developing a new exception to immunity, since international law is not static.[99] However, this way would be full of legal uncertainty.

There could be an *exception* if, e.g., an international court (like the ECtHR),[100] which the wrongdoing state has consented to exercising judicial power, would decide, that the wrongdoing state needs to pay compensation to another state. Currently, there is no decision by such international court to cease Russian assets or to oblige Russia to pay reparations to Ukraine. At least the jurisdiction of ECtHR was accepted by Russia at the start of the war against Ukraine. However, Russia ceased to be a member of the European Convention on Human Rights as of September 16, 2022.[101]

92 Art. 42 ARSIWA.
93 Art. 49 ARSIWA in more detail, see *Kamminga*, NILR 2023/70, p. 10.
94 Art. 54 ARSIWA.
95 *Kamminga*, NILR 2023/70, p. 11.
96 *Kamminga*, NILR 2023/70, p. 11.
97 The International Law Commission (ILC) established the ARSIWA.
98 See in detail the challenges of arguing that the confiscation is a lawful countermeasure *Brunk*, in: Zilioli/Bismuth/Thévenoz (eds.), pp. 187 et seq.; *De Gregorio Merino*, in: Zilioli/Bismuth/Thévenoz (eds.), pp. 196 et seq.; *Webb*, Study European Parliamentary Research Service, pp. 24 et seq.; *Kamminga*, NILR 2023/70, pp. 10 et seq.
99 *Webb*, Study European Parliamentary Research Service, pp. 14 et seq. and p. 16.
100 European Court of Human Rights.
101 *Council of Europe*, Russia ceases to be party to the European Convention on Human Rights, available at: https://www.coe.int/en/web/portal/-/russia-ceases-to-be-party-to-the-european-convention-on-human-rights (5/5/2025).

In the end, the confiscation of the CBR's assets in compliance with international law would only be possible, if the assets lose their protection under state immunity rules. The most promising ways to confiscate the assets of the CBR would be avoidance and justification, but even those exceptions from immunity leave the EU with obstacles and legal uncertainty in terms of international law, when confiscating the assets of the CBR.

2. Introduction of confiscation provisions (Council Regulation [EU] 833/2014)

Despite the legal risks, the Council of the EU and the European Commission sought for a way forward to confiscate the assets of the CBR. However, the confiscation of the entire assets was not pursued anymore due to the legal obstacles described above.[102] Nonetheless, since a substantial amount of assets were immobilised in the EU, these assets generated profits, which according to the EU, should be used for the reconstruction of Ukraine. Initially, two models to get hold of these profits were suggested by the Ad Hoc Working Party (AHWP) on the use of frozen and immobilised assets to support Ukraine's reconstruction.[103] Either the assets would be transferred to a central entity, which then would carry out investment operations (centralised option), or the current holders of the assets would be obliged to reinvest the cash balances and then transfer the profits to the EU (decentralised option).[104]

The reports based on Art. 5a para. 4a of Council Regulation (EU) 833/2014 provided by the holders of the CBR's assets led to the conclusion that most assets were held by a single CSD (EUR 191 billion).[105] Therefore, the decentralised option was favoured by the Council of the EU. The centralised option would have led to further legal risks, because the CBR's assets would have had to be transferred to a custodian managing and investing the assets. The ownership of the assets, therefore, would have needed to be changed. Even though the plan was to implement a reversible measure, only using the profits of the assets, whereas the assets themselves could be retransferred, in case Russia ceased its attack and contributed to the reconstruction of the Ukraine, the measure of changing the ownership would still need justification under international law. Furthermore, the EU would have to establish a special purpose vehicle[106] with a governance structure and sufficient (human and financial) resources to manage and invest the assets. Additionally, the EU and its Member States would have to take the risk of any losses incurred by the invest-

102 See above and *Council of the EU*, 10669/23, p. 2.
103 See the process taken by the *Council of the EU*, 10669/23, pp. 1 et seq.
104 *Council of the EU*, 10669/23, pp. 4 et seq.; *De Gregorio Merino,* in: Zilioli/Bismuth/Thévenoz (eds.), p. 198.
105 See *Steinbach*, How to harvest the windfall profits from Russian assets in Europe, available at: https://www.bruegel.org/analysis/how-harvest-windfall-profits-russian-assets-europe (5/5/2025).
106 Alternatively, an already existing international financial organisation (e.g., the European Investment Bank) could have been used.

ments.[107] For these reasons, the Council of the EU did not pursue the centralised option further and preferred the decentralised option.

The ECB, however, criticised both models, arguing *vis-á-vis* the AHWP[108] that the euro is the second most widely held reserve currency in the world and the key appeal of the euro is its liquidity, reliability and predictability. In the ECB's view, "using interest rate proceeds from immobilized central bank assets may encourage official reserve holders to turn their back on the euro." The ECB emphasised that the centralised model would be an unprecedented move and "could be perceived as interference with contractual agreements and with the freedom to invest official reserves. This risk would be lower under the windfall contribution option, but still significant. It should also be considered that such a measure could fragilize European custodians if custodians in other jurisdictions are not subject to comparable measures."

On 21 May 2024, the Council of the EU introduced amendments to Council Regulation (EU) 833/2014,[109] thereby implementing the obligation for CSDs in the EU holding assets of the CBR exceeding EUR 1 million to contribute the net profits of CBR's cash balances to the EU budget.[110] The CSDs are obliged keep the cash balances in a separate account; from 15 February 2024 onwards revenues from these cash balances should be registered separately; net profits[111] shall not be disposed by way of distribution in the form of dividends or in whatever form to the benefit of shareholders or any third party.[112] These net profits shall be subject to a financial contribution by the CSD due to the budget of the EU. The rate of financial contribution shall be 99,7%[113] of those net profits. The contribution to the EU budget shall take place bi-annually.[114] The CSDs have the option to provisionally retain a share not exceeding 10% of the financial contribution to comply with statutory capital and risk management requirements in view of the impact due to the war in

107 See to the different disadvantages *Council of the EU*, 10669/23, pp. 4 et seq.; *De Gregorio Merino,* in: Zilioli/Bismuth/Thévenoz (eds.), p. 200; *Webb*, Study European Parliamentary Research Service, pp. 44 et seq.

108 See *Council of the EU*, 10669/23, p. 6.

109 Council Regulation (EU) 2024/1469 concerning restrictive measures in view of Russia`s actions destabilising the situation in Ukraine, OJ L 1469 of 22/5/2024, p. 1.

110 See Art. 5a paras. 8–14 of Council Regulation (EU) 833/2014.

111 Deduction of all relevant expenses linked to or resulting from the management of the immobilised assets and the risk management associated with the immobilised assets and after deduction of corporate tax under the general regime of the Member State concerned.

112 Art. 5a para. 8 of Council Regulation (EU) 833/2014.

113 The rate below 100% is justified with "the responsibilities of the central securities depositories and the role they are playing in handling the immobilised assets, it is […] appropriate to provide that they can retain a limited percentage of the net profits to ensure the efficiency of their work." See Recital (26) of Council Regulation (EU) 2024/1469.

114 Art. 5a para. 9 of Council Regulation (EU) 833/2014.

Ukraine with regard to the assets held by CSDs.[115] The amounts of the financial contribution paid to the Union budget shall be used to support Ukraine.[116]

The Council is justifying its measures, arguing that the profits of the CBR's assets are only possible due to the immobilisation of the assets. Due to this immobilisation cash balances that usually are "transferred out of the central securities depositories before the end of the day", have to be managed by the CSDs and therefore gain revenues.[117] "Unexpected and extraordinary revenues do not have to be made available to the Central Bank of Russia under applicable rules, even after the discontinuation of the transaction prohibition. Thus, they do not constitute sovereign assets. Therefore, the rules protecting sovereign assets are not applicable to these revenues".[118] On basis of international law, the Council argues that "[it] is also appropriate to take additional exceptional measures aiming at supporting Ukraine and its recovery and reconstruction as well as its self-defence against the Russian aggression, in line with the objectives of the Common Foreign and Security Policy, in particular preserving the Union's values, fundamental interests, security, independence and integrity, the consolidation of and support for democracy, the rule of law, human rights and the principles of international law, including international humanitarian law, the right to self-defence and the prohibition of aggression under the UN Charter, the preservation of peace, prevention of conflicts and strengthening of international security and the protection of civilian populations as well as assisting populations confronting man-made disasters, such as those inflicted upon Ukraine and its population by Russia's war of aggression".[119]

Summing up, the Council of the EU argues that the profits accruing from the CBR's frozen assets are not owned by the CBR and therefore do not fall within immunity at all (*avoidance*). Furthermore, even if immunity was applicable the confiscation would be a countermeasure to Russia's war against Ukraine (*justification*).

It remains to be seen if Russia accepts this measure or will take any legal action against this measure and/or will introduce countermeasures against the EU. Currently, an estimated amount of USD 194 billion of foreign assets remain in Russia, whereof approximately USD 90 billion is owned by EU companies.[120] From an ESCB perspective, it will be interesting to observe if these measures will have an effect on the euro as the second reserve currency of the world.

115 Art. 5a para. 10 of Council Regulation (EU) 833/2014.
116 Art. 5a para. 14 of Council Regulation (EU) 833/2014 is referring to Annex XLI (which shall be reviewed yearly), which provided for a contribution to the Ukraine Loan Cooperation Mechanism (established by Regulation [EU] 2024/2773).
117 Recital (17) of Council Regulation (EU) 2024/1469.
118 Recital (18) of Council Regulation (EU) 2024/1469.
119 Recital (23) of Council Regulation (EU) 2024/1469.
120 See data: *Steinbach*, How to harvest the windfall profits from Russian assets in Europe, available at: https://www.bruegel.org/analysis/how-harvest-windfall-profits-russian-assets-europe (5/5/2025).

E. Role of supervisory authorities regarding the compliance of supervised entities with EU sanctions

The ECB and several central banks are the prudential supervisory authorities under the SSM-Regulation regarding credit institutions.[121] In this role as a supervisory authority, they are interested in the compliance of credit institutions – although the prudential supervisory authority is not necessarily also the competent sanctions authority – with the EU sanctions regulations. Should the credit institutions not comply with the EU sanctions regulations, this could represent a risk based on possible fines for the breach of EU sanctions as well as a reputational risk. Consequently, there is a certain interest by the prudential supervisory authorities that their supervised entities have sufficient "knowledge, methods and governance in place"[122] to properly comply with the EU sanctions. Furthermore, potential Russian exposure may affect a supervised credit institution and thereby raising the interest of the supervisory authorities.[123]

If prudential supervisory authorities take note of relevant information in terms of the EU sanctions, they are obliged to report this information to the competent sanctions authorities. This obligation derives either from national provisions[124] or directly from the EU sanctions regulations. Article 8 para. 1 Council Regulation (EU) 269/2014 foresees that "[w]ithout prejudice to the applicable rules concerning reporting, confidentiality and professional secrecy, natural and legal persons, entities and bodies shall […]" supply immediately any information which would facilitate compliance with the Council Regulation (EU) 269/2014. Such relevant information, e.g. on accounts and amounts frozen, need to be also submitted by prudential supervisory authorities to the competent sanctions authority of the Member State (or the European Commission) where the supervisory authority is resident or located. Furthermore, prudential supervisory authorities shall cooperate with the competent sanctions authority to verify such information.

F. Central banks as competent sanction authorities

A few central banks in the ESCB have a special role in implementing the EU sanctions, since these central banks (OeNB, *Deutsche Bundesbank*, *Central Bank of Ireland, Banca Națională a României, Banka Slovenije*) are the competent authori-

121 See Council Regulation (EU) 1024/2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, OJ L 287 of 29/10/2023, p. 63 (SSM-Regulation).

122 *Zilioli*, in: Zilioli/Bismuth/Thévenoz (eds.), p. 264.

123 See in detail *Zilioli*, in: Zilioli/Bismuth/Thévenoz (eds.), pp. 266 et seq.; *Zilioli*, in: Zilioli/Bismuth/Thévenoz (eds.), pp. 264 et seq. generally points out several implications for the ECB as supervisory authority; General Court, Case T-324/24 R; *UniCredit SpA v. ECB*, Order of the President of 22 November 2024, ECLI:EU:T:2024:858.

124 See Art. 12 para. 6 and Art. 19 para. 4 of the Austrian Sanctions Act 2024. Also, the FMA needs to report any suspicious activity in connection with EU sanctions.

ties for implementing the financial sanctions and supervising the compliance with EU sanctions of certain institutions (e.g., credit institutions).

Taking Austria as an example: On 11 February 2025 a new Sanctions Act entered into force in Austria. The OeNB is the competent authority to supervise financial market participants (whereby, e.g., insurance companies and crypto asset service providers are not included in this definition) concerning their compliance with the national and European sanctions framework.[125] All others tasks fall within the residual competence of the Austrian Federal Ministry of the Interior (acting through the Directorate State Protection and Intelligence Service [DSN]).[126] However, as of 1 January 2026, the OeNB will not be the competent financial sanctions authority anymore. The competent authority will henceforth be the FMA, which also takes over the supervision of sanctions compliance for insurance companies and crypto asset service providers.

Currently, the competencies of the OeNB[127] include the obligation to take administrative decisions on derogations based in the EU sanctions regulations (e.g. Art. 4–6f of Council Regulation [EU] 269/2014), whereby certain funds can be released if the conditions of the relevant derogation are fulfilled. The OeNB is responsible for deciding on the release of frozen funds held by Austrian credit, financial or payment institutions only based on provided derogation provisions. Similarly, the OeNB decides over certain derogations under Council Regulation (EU) 833/2014. In this regard, the OeNB must decide, for example, on requests regarding the acceptance of deposits exceeding EUR 100,000 per credit institution from Russian citizens, natural persons residing in Russia, or legal entities based in Russia.[128] The derogation must be requested from the OeNB, as the deposits are held by credit institutions. At the same time, requests regarding a derogation from the prohibition to provide crypto-asset wallet, account or custody services to Russian citizens, natural persons residing in Russia or legal entities based in Russia have to be decided by the DSN, since crypto-asset service providers[129] are not included by the current definition of financial market participants.

The OeNB is also supervising financial market participants' compliance with the applicable sanctions framework and whether they have implemented policies, controls and procedures for effective compliance with sanctions in place.[130] The OeNB uses different tools to supervise these obligations of financial market participants, e.g., on-site inspections or ad hoc requests for information. Furthermore, there

125 Art. 12 para. 2 of the Austrian Sanctions Act 2024.
126 Art. 12 para. 1 of the Austrian Sanctions Act 2024.
127 Art. 12 para. 2 of the Austrian Sanctions Act 2024.
128 Art. 5c and 5d of Regulation (EU) 833/2014.
129 See definition in Art. 2 para. 15 in connection with Art. 59 of Regulation (EU) 2023/1114 of the European Parliament and of the Council on markets in crypto-assets, OJ L 2869 of 20/12/2023, p. 1 (MiCAR).
130 Art. 12 paras. 2 and 3 in conjunction with Art. 7 of the Austrian Sanctions Act 2024.

are several reporting obligations which must be complied by the financial market participants.[131]

That being said, the OeNB is not the law enforcement agency in case of a breach of EU sanctions regulations. If the OeNB substantiates its suspicion of a breach of sanctions, it has, pursuant to Art. 16 et seq. Austrian Sanctions Act, submit a description of the facts to the public prosecutor (suspected breaches with transactions exceeding EUR 100,000) or to the competent criminal administrative authority (suspected breaches below that threshold and of reporting obligations in general).

G. Conclusion

With the beginning of the war in Ukraine and the measures taken against Russia via EU sanctions, the compliance with the EU sanctions got more complex for obliged entities, since the sanctions are extensive. This publication presents the different roles the central banks of the ESCB have in terms of EU sanctions. The central banks themselves must comply with the EU sanctions regulation, since they are also addressees of the directly applicable EU sanctions regulations. A major topic concerning the sanctions against Russia was the question of how to deal with the CBR's reserves and assets, which were immobilised after the beginning of the war, particularly with CSDs in the EU. In the end, the Council decided to confiscate certain profits originating from these assets by requiring CSDs to pass the profits to the Union. The ECB criticised these plans before they were implemented, as doing so could have an effect on the euro in its role as the second reserve currency of the world. Central banks, which are also prudential supervisory authorities, are affected by the EU sanctions in their work as well, on one hand by the obligation to provide information to the sanctions authorities, on the other hand, they have to assess the impact of EU sanctions on their supervised credit institutions as part of their daily work. On the other side of the spectrum a few EU central banks, e.g., OeNB or *Deutsche Bundesbank* are competent authorities for implementing the financial sanctions and supervising the compliance with EU sanctions of certain entities (e.g., credit institutions).

The political instrument of sanctions is here to stay and is nowadays seen as an important tool of the CFSP of the EU. The further development of EU sanctions can also be seen in other legislative projects of the EU. Recently, the Anti-Money Laundering-package (AML-package) – although not fully applicable yet – entered into force, whereby several provisions[132] provide that the compliance of obliged entities with targeted financial sanctions must be ensured, and the newly established

131 For example, in Art. 12 para. 8 of the Austrian Sanctions Act 2024; Art. 8. and Art. 9 of Council Regulation (EU) 269/2014; Art. 5g and Art. 5r of Council Regulation (EU) 833/2014.

132 See, e.g., Art. 20 para. 1 or Art. 26 para. 4 of Regulation (EU) 2024/1624 of the European Parliament and of the Council on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, OJ L 1624 of 19/6/2024, p. 1 (AMLR).

AMLA (Authority for Anti-Money Laundering and Countering the Financing of Terrorism) will amongst other tasks have to verify that obliged entities have in place adequate systems to implement requirements related to targeted financial sanctions.[133]

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133 See Art. 5 of Regulation (EU) 2024/1620 of the European Parliament and of the Council establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism, OJ L 1620 of 19 June 2024, p. 1 (AMLAR).

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