

# International **Comparative** Legal Guides



## Sanctions **2020**

A practical cross-border insight into sanctions law

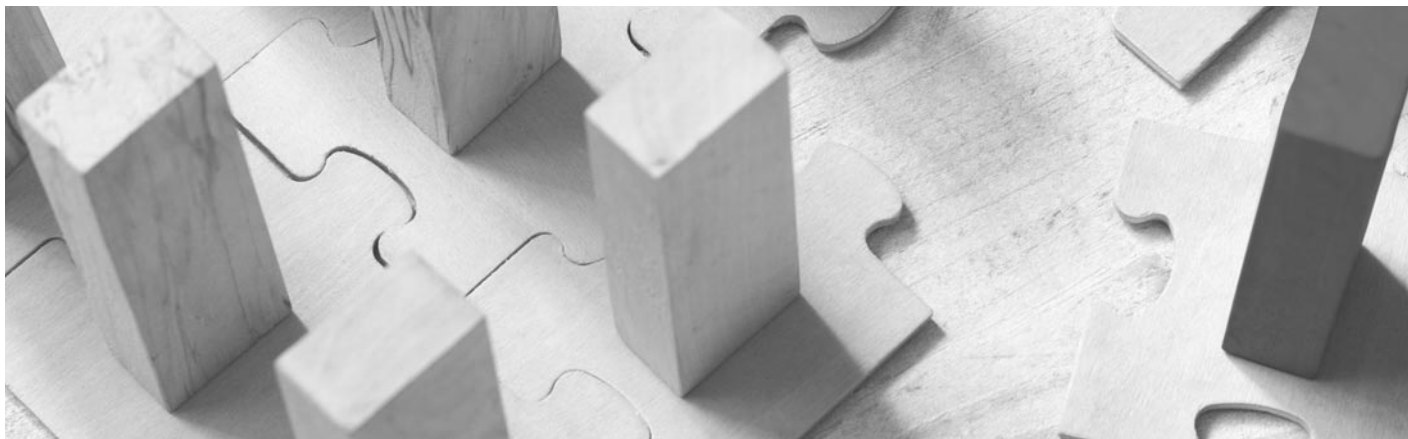
**First Edition**

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# Sanctions 2020

## First Edition

**Contributing Editors:**

**Roberto J. Gonzalez & Rachel M. Fiorill**

**Paul, Weiss, Rifkind, Wharton & Garrison LLP**

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# Denmark

Plesner



Jacob Ørskov Rasmussen



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## 1 Overview

### 1.1 Describe your jurisdiction's sanctions regime.

Denmark is a member of the United Nations and the European Union, which both adopt sanctions against countries and/or individual persons, groups, legal entities, bodies, etc. The Danish sanctions regime is based entirely on the sanctions adopted by the United Nations Security Council and the sanctions adopted by the European Union, and Denmark has not autonomously adopted any sanctions. All sanctions adopted by the United Nations Security Council are also adopted by the European Union through Council decisions and Council regulations. The Council regulations are directly applicable in all EU Member States and thereby confer rights and obligations on individuals in the EU Member States without any requirement for Denmark to formally adopt the regulation, whereas the Council decisions are directly applicable towards those to whom they are addressed.

### 1.2 What are the relevant government agencies that administer or enforce the sanctions regime?

The Danish sanctions regime is administered by several public authorities depending on which field of responsibility the sanctions are related to. The most relevant public authorities are the Ministry of Foreign Affairs of Denmark, the Danish Business Authority, the Ministry of Immigration and Integration, the Danish National Police and Danish State Prosecutor for Serious Economic and International Crime ("SØIK"). The Ministry of Foreign Affairs of Denmark is the relevant public authority in relation to all general matters and general questions in relation to sanctions. The Danish Business Authority administers all matters concerning blocking or freezing of funds and is also the competent authority in terms of, e.g., export control licences, sanctions exemption licences and certain country-specific sanctions such as Iran, Syria, Russia and North Korea.

The Ministry of Immigration and Integration and the Danish National Police are the relevant public authorities in relation to all entry denials in relation to travel bans. The Danish National Police is also the competent authority in terms of criminal enforcement. The SØIK deals with cases concerning economic and international crime that are substantial in scale, are part of organised crime, are carried out by applying unique business practices or otherwise qualify for special attention or are of a comprehensive nature.

The most relevant public authority in relation to enforcement of the sanctions in Denmark is the Danish Business Authority which reports any alleged violation of sanctions to the Danish National Police. A complete list of public authorities responsible for administering the sanctions regime can be found on the Ministry of Foreign Affairs of Denmark's website: <http://um.dk/da/Udenrigspolitik/folkeretten/sanktioner/ansvarlige-myndigheder/>.

## 2 Legal Basis/Sanctions Authorities

### 2.1 What are the legal or administrative authorities for imposing sanctions?

Sanctions are adopted by the United Nations and the European Union as described in section 1 above. Denmark has not made any autonomous adoption of sanctions.

### 2.2 Does your jurisdiction implement United Nations sanctions? Describe that process. Are there any significant ways in which your jurisdiction fails to implement United Nations sanctions?

Denmark is a member of the United Nations, and the United Nations sanctions are implemented in the Danish sanctions regime via the European Union through Council decisions and Council regulations, as described in question 1.1 above. There are no significant ways in which Denmark fails to implement the United Nations sanctions.

### 2.3 Is your country a member of a regional body that issues sanctions? If so: (a) does your country implement those sanctions? Describe that process; and (b) are there any significant ways in which your country fails to implement these regional sanctions?

Denmark is a member of the European Union, which adopts sanctions. The European Union adopts all sanctions adopted by the United Nations. In addition, the European Union may reinforce United Nations sanctions by applying additional and stricter measures. Further, where the European Union deems it necessary, it may decide to adopt autonomous sanctions. All sanctions adopted by the European Union are either directly enforceable in all EU Member States, including Denmark, (sanctions adopted by Council regulations) or directly binding towards certain individuals and companies (sanctions adopted by Council decisions). There are no significant ways in which Denmark fails to implement the European Union sanctions. The Danish Business Authority is the competent authority responsible for the administration of the sanctions in Denmark and cooperates with the European Union and other competent authorities of the European Union Member States in order to secure uniform implementation and enforcement of the sanctions.



## 2.4 Does your jurisdiction maintain any lists of sanctioned individuals and entities? How are individuals and entities: a) added to those sanctions lists; and b) removed from those sanctions lists?

Denmark does not maintain an individual Danish list of sanctioned individuals and entities but instead refers to the list of sanctioned individuals and entities prepared by the European Union. The process of how individuals and entities are added and removed from the European Union sanctions list are based entirely on European Union processes where listed persons and entities may submit a request to the Council, together with supporting documentation, requesting that the decision to list them be reconsidered. Whereas the United Nations' sanctions are adopted by the European Union, the European Union's sanctions list adopts the contents of the United Nations' sanctions list, but also contains additional or stricter measures adopted by the European Union towards individuals and entities subject to sanctions adopted by the United Nations and sanctions adopted autonomously by the European Union.

## 2.5 Is there a mechanism for an individual or entity to challenge its addition to a sanctions list?

Individuals and entities subject to the European Union's sanctions list have the possibility of challenging the Council's decision before the General Court of the European Union, in accordance with the conditions laid down in the second paragraph of Article 275 and the fourth and sixth paragraphs of Article 263 of the Treaty on the Functioning of the European Union.

## 2.6 How does the public access those lists?

A consolidated sanctions list of the European Union is publicly available on the European Union's website, the website of the Danish Business Authority and the website of the Ministry of Foreign Affairs of Denmark. By signing up as a user of the website of the European Union, users may receive notifications by email, including a link to the current consolidated European Union sanctions list as updated from time to time.

## 2.7 Does your jurisdiction maintain any comprehensive sanctions or embargoes against countries or regions?

European Union sanctions comprise both comprehensive sanctions and embargoes against countries and are directly applicable to Denmark. Denmark does not maintain any autonomously adopted, comprehensive sanctions or embargoes against other countries or regions.

## 2.8 Does your jurisdiction maintain any other sanctions?

Further to the comprehensive sanctions and embargoes adopted by the European Union, the European Union also adopts sanctions targeted directly at specific persons or specific entities. Targeted sanctions are, e.g., directed at individuals or legal entities that are known terrorists or who support terrorism.

## 2.9 What is the process for lifting sanctions?

All sanctions adopted by the European Union, whether based on a United Nations sanction or not, are kept under constant review to

ensure that they continue to contribute towards achieving their stated objectives. Sanctions adopted by the European Union based on United Nations Security Council resolutions do not have a date of expiration and are lifted through decisions of the United Nations Security Council. Following a decision from the United Nations Security Council to amend or lift sanctions, the European Union will amend or lift the relevant sanctions adopted by the European Union based on United Nations Security Council resolutions.

If United Nations sanctions have been adopted by the European Union by application of additional and stricter measures, such restrictive measures are reviewed at least annually. Autonomous sanctions imposed by the European Union by way of a Council decision will usually apply for a 12-month period, while the corresponding Council regulation is usually open-ended. Before extending a Council decision, the sanction is reviewed to ensure that it still contributes towards achieving its stated objectives.

## 2.10 Does your jurisdiction have an export control regime that is distinct from sanctions?

The European Union has imposed a separate export control regime comprised mainly by Council regulation no. 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (the "Dual-Use Regulation"). Being a European Union regulation, the Dual-Use Regulation is directly applicable in all EU Member States, including Denmark. On a Danish national level, the Dual-Use Regulation is supplemented by some executive orders adopted pursuant to the Dual-Use Regulation. Further, criminal enforcement, including penalties applicable for violation of the Dual-Use Regulation, is subject to mainly the Danish Criminal Code and the Danish Administration of Justice Act. In Denmark, the export control regime imposed by the European Union is administered by the Danish Business Authority which, e.g., grants licences to exports of dual-use products. The Ministry of Foreign Affairs of Denmark assists with responses to hearing requests from the Danish Business Authority in relation to general or specific requests on whether such licences shall be granted.

Finally, export of military arms and war materials are subject to mainly the Danish War Materials Act and the Danish Weapons and Explosives Act with the Danish Ministry of Justice, including the Danish National Police, acting as the main competent authority.

It should be noted that a recast of the Dual-Use Regulation is currently pending. The re-casted dual-use regulation is expected to introduce several changes to the EU export control system of dual-use items to adapt it to the changing technological, economic and political circumstances. Further, it is expected to simplify and improve the current rules and optimise the European Union licensing architecture.

## 2.11 Does your jurisdiction have blocking statutes or other restrictions that prohibit adherence to other jurisdictions' sanctions or embargoes?

The European Union has adopted a blocking statute, Council regulation no. 2271/96 (the "Blocking Statute"), protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom. Being a European Union regulation, the Blocking Statute is directly applicable in all EU Member States, including Denmark. The Blocking Statute is constantly updated to protect EU citizens and EU companies from the effects of extra-territorial legislation, e.g. restrictive measures imposed by the United States through secondary sanctions.

**2.12 Does your jurisdiction impose any prohibitions or threaten any sanctions consequences for transactions that do not have a connection to that jurisdiction (sometimes referred to as “secondary sanctions”)?**

No. The European Union has not adopted any secondary sanctions.

### 3 Implementation of Sanctions Laws and Regulations

**3.1 What parties and transactions are subject to your jurisdiction's sanctions laws and regulations? For example, do sanctions restrictions apply based on the nationality of the parties involved? Or the location where the transactions take place?**

The sanctions adopted by the United Nations and the European Union apply to all Member States of each body, including Denmark.

Criminal enforcement of the failure to comply with provisions or prohibitions stipulated by law to perform the obligations incumbent on the state as a member of the United Nations, or the failure to comply with provisions of or introduced pursuant to regulations adopted according to Articles 60, 301 or 308 of the Treaty Establishing the European Economic Community or Article 215 or 352 of the Treaty on the Functioning of the European Union, which provisions provide for the interruption or reduction, in full or in part, of the financial or economic relations with one or more third countries outside the European Union, is subject to the Danish Criminal Code.

The Danish Criminal Code applies to individual persons as well as legal persons.

Pursuant to the Danish Criminal Code's general rules for application of criminal law provisions, acts falling within Danish criminal jurisdiction are acts that are committed (i) within the Danish state, (ii) onboard a Danish vessel or aircraft located within the territory of another state by a person belonging to or travelling on the vessel or aircraft, or (iii) onboard a Danish vessel or aircraft located outside the territory of any state.

Further, acts committed within the territory of another state and acts committed outside the territory of any state may, pursuant to the Danish Criminal Code, be subject to Danish criminal jurisdiction if certain requirements that create a Danish nexus are fulfilled.

**3.2 Are parties required to block or freeze funds or other property that violate sanctions prohibitions?**

Pursuant to the European Union regulations concerning sanctions on terrorism and regulations concerning sanctions towards third countries, private individuals, companies, public authorities, organisations and financial institutions, etc. may, under certain circumstances, be required to block or freeze funds or other property that violate sanctions prohibitions. Under certain circumstances, a block or freeze of funds or other property is subject to prior approval by the SØIK.

**3.3 Are there licences available that would authorise activities otherwise prohibited by sanctions?**

The possibility of applying for a licence authorising activity otherwise prohibited by the relevant European Union sanctions depends on whether the relevant Council decision and Council regulation adopted by the European Union allows for such an exemption licence to be given by the national competent authority, e.g. the Danish Business Authority in Denmark.

**3.4 Are there any sanctions-related reporting requirements? When must reports be filed and what information must be reported?**

Once a block or freeze of funds or other property has been effected, such block or freeze must immediately be reported to the Danish Business Authority, which will in turn report the block or freeze in question to the Commission of the European Union. Pursuant to general guidelines issued by the Danish Business Authority, the notification to the Danish Business Authority must, to the greatest extent possible, include the name and address of the owner of the bank account/of the other property in question, the bank account details/a description of the property in question, etc., the balance of the account in question/the value of the property in question as per the date of the block or freeze, a transcript of transactions carried out on the bank account in question, if any, and any other information of relevance.

**3.5 How does the government convey its compliance expectations? Are certain entities required to maintain compliance programmes? What are the elements of a compliance programme required (or recommended) by the competent regulator(s)?**

The central governing body of Danish companies that are subject to the Danish Companies Act are in general required to establish risk management and internal control procedures that the central governing body of the company in question deems adequate for its business. This general requirement is frequently deemed to implicitly imply a requirement to establish a compliance programme in relation to sanctions when dealing with non-Danish counterparties.

The Danish Business Authority has issued general guidelines on blocking and freezing of funds and other property available at the website of the Danish Business Authority (in Danish only).

Further, the Commission of the European Union has issued its recommendations on internal compliance programmes for dual-use trade controls under the Dual-Use Regulation. The general principles behind these recommendations are also relevant for sanctions and include, e.g., recommendations to cover the following core elements in a compliance programme:

1. Top-level management commitment to compliance.
2. Organisation structure, responsibilities and resources.
3. Training and awareness raising.
4. Transaction screening process and procedures.
5. Performance review, audits, reporting and corrective actions.
6. Recordkeeping and documentation.
7. Physical and information security.

The recommendations may be accessed through the following link to the European Union's website: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019H1318&from=EN>.

## 4 Enforcement

### Criminal Enforcement

**4.1 Are there criminal penalties for violating economics sanctions laws and/or regulations?**

Pursuant to Section 110 (c) of the Danish Criminal Code, a fine or imprisonment for a term not exceeding four months, or in particularly aggravating circumstances, imprisonment for a term not exceeding four years, is imposed on any person who fails to comply with provisions or prohibitions stipulated by law to perform the obligations incumbent on the state as a member of the United Nations.

Further, the same penalties as set out above are imposed on any person who fails to comply with provisions of or introduced pursuant to regulations adopted according to Articles 60, 301 or 308 of the Treaty Establishing the European Economic Community or Article 215 or 352 of the Treaty on the Functioning of the European Union, which provisions provide for the interruption or reduction, in full or in part, of the financial or economic relations with one or more third countries outside the European Union or for corresponding sanctions against individuals, groups of persons or legal persons. If an offence as referred to in the above is committed through negligence, the penalty is a fine or imprisonment for a term not exceeding two years.

Further, the Danish Criminal Code also contains separate Sections concerning violations against financing of terrorism; see Section 114 (b) of the Danish Criminal Code, which may also be of relevance.

It should be noted that the violation of the export control rules concerning dual-use products or export control rules in relation to export of arms and war materials are subject to separate provisions in the Danish Criminal Code and other Danish acts and executive orders.

#### 4.2 Which government authorities are responsible for investigating and prosecuting criminal economic sanctions offences?

As the competent authority for administration of sanctions in Denmark, the Danish Business Authority reports any alleged violation of sanctions to the Danish National Police, who will investigate the case by itself or in cooperation with the SØIK. The Danish Prosecution Service will prosecute any court cases.

#### 4.3 Is there both corporate and personal liability?

Both natural and legal persons (corporations, funds, partnerships, publicly-owned companies, etc.) can be held liable for violations of the Danish Criminal Code, including Section 110 (c) of the Danish Criminal Code outlined above; see Section 306 of the Danish Criminal Code. In this respect, it follows from a general corporate liability perspective of Danish law that a legal person cannot act independently, and consequently any violation by a legal person therefore requires an act or omission by one or more natural persons acting on behalf of the legal person. It is not a requirement that the acting individual is part of the management. Furthermore, the legal person can only be held liable if the natural person(s) acting in violation of sanctions was/were not acting abnormally, taking into consideration the businesses, practices and procedures of the specific legal person. Pursuant to general principles of Danish law, the abnormality of the actions conducted by the natural person must be assessed on a case-by-case basis, taking into consideration the specific circumstances of the action in question.

#### 4.4 What are the maximum financial penalties applicable to individuals and legal entities convicted of criminal sanctions violations?

There are no limitations applicable as to the maximum financial penalties that may be applied for individuals and legal entities convicted of criminal sanctions violations.

#### 4.5 Are there other potential consequences?

Other potential consequences for violations of sanctions may include, e.g., reputational loss and loss of commercial relations, deprivation of the right to continue certain activities or to carry on certain activities in certain circumstances (e.g. deprivation of licences), extradition, exclusion from the ability to tender for contracts subject to public procurement, etc.

## Civil Enforcement

#### 4.6 Are there civil penalties for violating economics sanctions laws and/or regulations?

There is no civil enforcement institute applicable for Denmark.

#### 4.7 Which government authorities are responsible for investigating and enforcing civil economic sanctions violations?

This is not applicable in Denmark.

#### 4.8 Is there both corporate and personal liability?

This is not applicable in Denmark.

#### 4.9 What are the maximum financial penalties applicable to individuals and legal entities found to have violated economic sanctions?

This is not applicable in Denmark.

#### 4.10 Are there other potential consequences?

This is not applicable in Denmark.

#### 4.11 Describe the civil enforcement process, including the assessment of penalties. Are all resolutions by the competent authorities public?

This is not applicable in Denmark.

#### 4.12 Describe the appeal process. Have companies challenged penalty assessments in judicial proceedings?

This is not applicable in Denmark.

#### 4.13 Are criminal and civil enforcement only at the national level? Is there parallel state or local enforcement?

This is not applicable in Denmark.

#### 4.14 What is the statute of limitations for economic sanctions violations?

This is not applicable in Denmark.

## 5 General

#### 5.1 If not outlined above, what additional economic sanctions-related measures are proposed or under consideration?

To our knowledge, no additional economic sanctions-related measures are proposed or under consideration.

**5.2 Please provide information for how to obtain relevant economic sanctions laws, regulations, administrative actions, and guidance from the Internet. Are the materials publicly available in English?**

The website of the Danish Business Authority: <https://eksportkontrol.erhvervsstyrelsen.dk/sanktioner>.

The website of the Foreign Ministry of Denmark: <http://um.dk/da/Udenrigspolitik/folkeretten/sanktioner/>.

The website of the European Union: [https://ec.europa.eu/fpi/what-we-do/sanctions\\_en](https://ec.europa.eu/fpi/what-we-do/sanctions_en).



**Jacob Ørskov Rasmussen** is head of Plesner's Commercial Contracts team, Franchise team and Automotive team – and he has years of experience in advising Danish and international clients on contractual relationships, both nationally and internationally.

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