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Caught in the Middle: Overcompliance and Non-Compliance with EU Sanctions

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Abstract. This article examines the phenomenon of overcompliance with European Union (EU) sanctions, particularly in the context of measures imposed in response to Russia's war against Ukraine. Overcompliance occurs when companies and individuals exceed the legal requirements of sanctions, often due to regulatory uncertainty, broad and ambiguous legal provisions, overlapping responsibilities, ethical considerations, and external pressures such as public opinion. The article situates EU sanctions within both foreign policy and domestic regulatory frameworks, highlighting the dual expectation placed on EU companies: to further geopolitical objectives while independently interpreting and implementing complex regulations in daily operations. The lack of precise, binding guidance from EU authorities compels companies to calibrate their own compliance measures, leading to a cautious approach that can blur the line between compliance and overcompliance. The article argues that overcompliance is not merely an anomaly but also an inherent feature of the EU sanctions regime, reinforced by the "obligation of result" approach. To navigate this landscape, companies are encouraged to take proactive ownership of their compliance processes – assessing, documenting, and communicating their roles and responsibilities, and engaging with other stakeholders to clarify expectations. Ultimately, effective sanctions implementation depends on informed, calibrated, and collaborative compliance strategies that balance the risks of both overcompliance and non-compliance, with the overarching aim of securing the sought-after middle ground.

Keywords: overcompliance, EU sanctions, regulatory uncertainty, obligation of result, compliance responsibility.

JEL Classification: K33, K22, L51, D81.

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1. INTRODUCTION

The phenomenon of overcompliance with European Union (EU) sanctions does not always receive the attention it deserves. Sanctions overcompliance refers to situations in which individuals and companies exceed what is legally or regulatorily required of them. With the extensive use of sanctions in response to Russia's war against Ukraine, and considering the challenges posed by sanctions circumvention and evasion, it is arguably only logical that the emphasis lies on sanctions enforcement and combatting non-compliance. Sanctions are after all a foreign policy tool, aimed at influencing other international actors. Whether overcompliance with EU sanctions is a good or a bad thing from a foreign policy perspective is a policy consideration and not the topic of this article. This article will explore sources of overcompliance and what it tells us about the challenges facing those who are responsible for implementing sanctions compliance measures in their daily practice, especially EU companies.

A frequently asked question by EU companies concerns the exact scope of what EU sanctions regulations require of them. According to guidance from the European Commission, EU companies 'have to perform appropriate due diligence calibrated according to the specificities of their business and the related risk exposure' (Commission Consolidated FAQs, A.2, Q.1), to ensure they comply with the regulations. How this should be done in practice is not specified in the regulation and it is the responsibility of all those subject to EU jurisdiction to define this for themselves. By definition this means that this article also won't provide the full answer to abovementioned question as applicable to a specific EU company. Instead it aims to contextualize the predicament in which many of those trying to implement EU sanctions find themselves. Overcompliance will be used as a prism to shed a light on some of the particular challenges associated with EU sanctions compliance. Starting with a theoretical part exploring the concept of overcompliance and two different analytical perspectives on sanctions regulations, the article will discuss the requirements imposed by sanctions regulations and what this implies in practice for those responsible for implementing sanctions compliance measures in their daily practice.

The article suggests that companies seeking to adhere to EU sanctions should begin by recognizing that EU sanctions are domestic regulatory measures, directed at them and not at a foreign target. Despite the foreign policy objectives of the regulations, EU sanctions seek to influence the behaviour of those under EU jurisdiction and require their active support in the implementation of sanctions. The article further argues that this utilisation of the law as a tool of political action is directly linked to some of the most basic but persistent compliance challenges it poses for those trying to implement sanctions requirements. Their political nature and the involvement of many EU companies and individuals causes ambiguity. In the case of sanctions regulations, challenges are exacerbated by the uncertainty arising from the scope and rapid introduction of new and often complex requirements. It is argued that a particularly important cause of uncertainty can be found in the fact that the addressees of sanctions prohibitions often lack a clear definition. These factors contribute to overcompliance, non-compliance, or an unfortunate combination of both. Therefore, the first step that any individual or company aiming to comply with EU sanctions should take, is to acknowledge that sanctions measures are directed at them. Secondly, that it is up to them to define how they understand their specific role, and thirdly, that they should define, document, and communicate the measures that they will take. Each EU company should take responsibility for its sanctions compliance, which means to decide and document an approach that it considers appropriate for its circumstances. It should be willing to discuss and test this approach with other stakeholders, such as suppliers, customers, financial service providers, or accountants. Without such decisions, more uncertainty and ambiguity will remain. What is more, without communication and coordination between different stakeholders, it will be near impossible to improve the definition of roles and responsibilities.

2. OVERCOMPLIANCE

A few years ago, de-risking practices by financial institutions – which are associated with sanctions overcompliance – received considerable attention, with a peak in regulatory publications and analysis on the topic starting early 2022, with a publication from the European Banking Authority (EBA, 2022). De-risking involves financial institutions deciding not to engage in relationships, or terminating relationships with customers or transactions associated with higher money laundering ('ML') or terrorism financing ('TF') risks. The practice is influenced by regulatory pressures, compliance costs, profitability considerations, and the way in which these different factors interact with an institution's risk appetite. While emphasis primarily lies with ML/TF risks, sanctions compliance is also implicated. In June 2022, the UN Special Rapporteur on unilateral coercive measures published a guidance note on overcompliance and specifically called on financial institutions to stop overcomplying with unilateral sanctions regimes (UN OHCHR, 2022).

The issue over overcompliance is not limited to the financial sector however and can be found in almost any sector dealing with sanctions. Within organisations and sectors that don't typically face the same regulatory pressures as financial institutions, overcompliance is often the result of unfamiliarity with the regulations and related uncertainties about regulatory requirements. In recent years the expansion of EU sanctions has affected many sectors that previously had little or no exposure to sanction risks. In this context overcompliance is typically not the result of a thorough risk assessment that leads to a risk-based decision, but rather the result of the absence of such an assessment. Here uncertainty about the exact scope of applicable obligations and prohibitions, sometimes influenced by ethical considerations and political opinions, will influence the outcome.

It is important to recall that sanctions overcompliance refers to situations in which individuals and legal entities exceed what is legally or regulatorily *required* of them. This means that overcompliance is best kept distinct from scenarios in which the effect of sanction provisions exceeds their regulatory scope due to regulatory design or enforcement strategies (Hoye, 2024). While it may be difficult to untangle the two in practice, the distinction is important to clarify our understanding and use of the term. Here we use overcompliance to refer to situations in which companies decide not to engage in certain business transactions, even when it is allowed and possible under the regulations to do so, or to situations in which they decide to take compliance measures that exceed what is arguably appropriate for them, and where this is *not* the aim of the regulator. It is true that the term overcompliance can be 'both analytically and descriptively misleading' as Hoye argues, because it firstly implies that it is possible to comply, and because it implies that overcompliance is an unintended bug in the system, where it should rather be considered as normal compliance that is a feature of the system (Hoye, 2024, p. 164-165). Again, we use overcompliance to refer to situations in which companies should be able to comply, but decide not to engage in certain business transactions, even when it is allowed and possible under the regulations to do so.

As an illustration one can look at the decisions of major EU brewing companies to withdraw from the Russian market in 2022. Talking about the company's decision to exit Russia, the CEO of Carlsberg in Juli 2022 explained that it had been the first time that social media had been so aggressive in pushing for them to leave, often referencing the list of companies that were still active in Russia being kept by a Yale professor, even though they weren't violating any sanctions. As a company this wasn't something they had expected or experienced before, and it had felt a bit like a rewriting of the rules, requiring further accountability from companies regarding the countries in which they operated (Couwenbergh, 2022). This is an example of measures that may have exceeded what was legally or regulatorily required of the company at the time. In this case it was primarily influenced by public opinion pressures. These pressures can be linked to the imposition of sanctions regulations around that time, and it could be argued they were at least partially caused by them. However, judged by the provisions in the regulations, the outcome does not seem to have been the regulatory objective at the time the regulation was introduced. In similar fashion other companies may have decided or may decide to stop certain transactions with sanctioned jurisdictions because of the personal opinions of company leadership or that of their employees, potentially influenced by the development of

a broader public opinion. These opinions can be influenced by ethical considerations as to what should be done, but also by uncertainty and misunderstanding of what is legally required. To further analyse and contextualise these sources of sanctions overcompliance, the next paragraph will consider two different regulatory analytical perspectives of sanctions regulations.

3. THE FOREIGN POLICY PERSPECTIVE: SANCTIONS AS A TECHNIQUE OF ECONOMIC STATECRAFT

From the perspective of international relations, sanctions are best understood as a technique of economic statecraft. Based on his classic 1985 study of economic statecraft Baldwin (Baldwin, 2020) distinguishes three basic components: the type of policy instrument used (i.e. economic), the domain of the influence attempt (i.e. other international actors), and the scope of the influence attempt (i.e. some dimensions of the target's behaviour). Understood this way, sanctions are a specific instrument that, for example, allows the state importing and exporting goods to impose negative measures (i.e. import and export restrictions) and positive measures (i.e. introduction of exemptions, removal of certain restrictions) in relation to a target state. The imposition of sanctions is a political act, and its impact should therefore arguably primarily be analysed from the perspective of foreign policy and the nature of the objectives being sought by such policy (Cortright & Lopez, 2000).

For the EU, sanctions are a crucial part of the EU's common foreign and security policy (CFSP). EU sanctions are imposed through Council Decisions, which are binding on all EU member states, and through related Council Regulations, which are directly binding on all those subject to EU jurisdiction. The responsibility for implementing EU sanctions in their daily practice rests with all those subject to EU jurisdiction. According to article 13 of Council Regulation (EU) 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, EU sanctions shall apply:

a. within the territory of the Union, including its airspace;
b. on board any aircraft or any vessel under the jurisdiction of a Member State;
c. to any person inside or outside the territory of the Union who is a national of a Member State;
d. to any legal person, entity or body, inside or outside the territory of the Union, which is incorporated or constituted under the law of a Member State;
e. to any legal person, entity or body in respect of any business done in whole or in part

within the Union.

The EU is an international organisation and not a state with its own territory, so the reference to territory in this standard jurisdictional clause should be understood as demarcating the total area of the territories where EU Member States exercise their jurisdiction (Geursen, 2024). Thereby making EU member states, its nationals and any legal person, entity or body, inside or outside of it that is incorporated or constituted under Member State law, responsible for implementing EU sanctions. Based on paragraph (e) this responsibility might even extent beyond these territorial borders (Bismuth & Dunin-Wasowicz, 2024). While Member States primarily implement sanctions, monitor compliance, and enforce EU sanctions, it is private EU companies – especially those in finance, trade, logistics, legal, and technology sectors – that must also implement the rules in their daily operations to ensure they comply with them.

For our purposes an important aspect of Baldwin's definition of economic statecraft, when applied to sanctions, is that a distinction should be made between the influence attempt – through a sanctions policy – and the actual influence on the other state (Baldwin, 2020). The actual level of influence is what is often featured in public and scholarly debates about the effectiveness of sanctions. Such influence is a relational concept addressing the outcome of a sanctions policy, whereas the influence attempt is a property concept that refers to the policy instrument being deployed and the potential power base it represents. In other words, western governments for example have the capability to cut Russia off from SWIFT as an influence attempt, but the level of influence this exerts is a separate

matter. This distinction between the influence attempt – and the actual influence on the foreign target, has a mirror image in the distinction that can be made between the imposition of EU restrictive measures on the one hand, and the level of implementation of and compliance with such measures by EU companies on the other. The political act of imposing sanctions thus comprises two influence attempts: one directed at the target of sanctions, the other at those being made responsible for implementing such sanctions in their daily activities.

4. THE DOMESTIC REGULATORY PERSPECTIVE: SANCTIONS AS A TOOL OF POLITICAL ACTION

Looking at the short description of the EU sanctions framework and the interconnected stages of imposition, implementation, enforcement, and compliance, it is difficult to escape the need for a second analytical perspective; one in which sanctions are viewed through the lens of domestic regulation. Despite their foreign policy aims and their adoption at the supranational level, EU sanctions are at the same time domestic regulations designed to govern business practices and activities within the EU itself.

The EU has been imposing sanctions ever since the entry into force of the Treaty of Maastricht in November 1993 (Giumelli *et al.* 2020). The introduction and subsequent development of EU sanctions coincided with many European governments divesting themselves from publicly owned industries as part of a broader movement from government to governance and the creation of a regulatory state. Governance in a regulatory state is directly linked to the idea of an idea of management of networks, which opposes the conventional hierarchical governing style that relies on public and private sector boundaries. To function effectively a regulatory state requires a structural coupling of politics, law, and social life. In practice this coupling is inadequate because the demands of law, politics, and social life are impossible to fully reconcile within a regulation. As a result, certain forms of regulatory failure, with circumvention being the best know example, should be considered the rule and not the exception (Moran, 2023). At the core the inadequate coupling between the demands of law, politics, and social life that effect a regulation can be traced back to the fact that law is being used to modify behaviour instead of regulating and enforcing existing values or norms.

Pacta sunt servanda, the rule that 'agreements must be kept' is a typical example of a legal rule that originated from preexisting societal values and norms. In 1970 the Dutch legal scholar and later judge of the European Court of Justice Tim Koopmans wrote a short article about the role of the legislator in which he referred to this rule as the textbook example of the codifying function of the law (Koopmans, 1970). Koopmans article reflects his coming to terms with the growth of the regulatory state in the Netherlands. He juxtaposed this 19th century codifying function of the law with his present-day modifying function of the law. Where the law previously mainly consisted of rules that were the translation of existing values or norms in use in society, the law started giving legal form to social interventions ('modifications'). As a result the law, having acquired a directional function, now bore the stamp of political action more strongly. As it was made to serve social change, legislation became part of a particular policy. By default policies are more frequently contested because they reflect complex trade-offs among diverse interests, values, and expectations within societies and political institutions. These complex trade-offs will be reflected in the resulting regulations, like sanctions measures, but also in the way these regulations will be implemented and adhered to in practice.

Koopmans questioned how this development would impact judges who were used to relying on established legal principles and societal norms; noting further that judges at that time were not the most obvious supporters of societal change, nor particularly politically engaged (Koopmans, 1970). In a similar fashion it can be questioned how the extensive use of EU sanctions is impacting EU companies not necessarily accustomed to implementing the measures required for sanctions compliance. The extent to which EU companies support the domestic changes required for their implementation of sanctions regulations, and whether they are politically engaged regarding the foreign policy objectives pursued is difficult to say in a generalized matter. In 2022 the EU had 32.3 million

companies employing 160 million persons, with 99% of those enterprises employing less than 50 persons each (Eurostat, 2024). With such a high number of companies spread across different member states, it is safe to assume that the responses will differ. While many companies may generally support the policy objectives of certain sanctions measures, others may strongly disapprove. In either case, both will have to come to terms with their assigned role in the execution of the EU's foreign policies, which are being imposed through the instrumentalization of law. The extent to which the implementation of sanctions negatively affects their business is arguable a good predictor of how supportive a particular company may feel of the measures, but this may still be corrected by their level of engagement with the policy objectives of the measures. In other words, political opinions matter in this context. To further complicate things, employees within these companies may similarly differ in their assessment of, and support for, certain sanctions measures. The same might apply to their customers, suppliers and other stakeholders, especially where they are spread across different sectors, different EU member states, and even outside the EU. This variation in responses and the evolution of responses over time is reflective of the rapid modification of behaviour that the regulation requires. When sanctions are imposed, they don't necessarily reflect preexisting societal values and norms within the state imposing the sanctions.

As an example, one can look at the introduction of EU sanctions aimed at reducing the flow of certain goods to a sanctioned target like Russia, resulting in shifting trade flows from the EU that are shortly after being associated with potential sanction circumvention. From a foreign policy perspective too much circumvention means that the influence resulting from the influence attempt will likely be lower than anticipated; the power base could not be effectively utilized. Viewed from the perspective of domestic regulations it can be seen as an indication of inadequate implementation by EU companies aiming to comply with the regulations, and the active exploitation of gaps in the regulation by those aiming to violate the regulations. It is also an indication of certain limitations in the regulatory reach of EU sanctions measures beyond domestic EU companies. In response, EU measures such as anti-circumvention provisions in the eleventh sanctions package and the progress of the EU's harmonization directive covering the criminalization of violations of EU sanctions are trying to address these gaps and extend the regulatory reach.

5. OBLIGATION OF RESULT

Now responsible for the implementation of sanctions regulations in their daily practice, a frequently asked question (FAQ) from EU companies is how they can ensure compliance. The short and rather unsatisfying answer is that one complies with EU sanctions regulations when one does not breach any of its provisions, i.e. when one 'ensures compliance' (Commission Consolidated FAQs, A.2, Q.1). According to the non-binding guidance issued by the European Commission for the implementation and interpretation of sanction regulations – relating to Russia and Belarus in particular –, the regulations:

> *'[…] lay down on EU operators (and operators conducting business in the EU) an obligation of result regarding the obligation to freeze assets and the prohibition to make funds and economic resources directly or indirectly available. The underlying means (due diligence) used by the operators to ensure compliance with the above-mentioned obligations and prohibitions are not further specified in EU legislation. EU operators have to perform appropriate due diligence calibrated according to the specificities of their business and the related risk exposure. It is for each operator to develop, implement, and routinely update an EU sanctions compliance programme that reflects their individual business models, geographic areas of operations and specificities and related risk-assessment regarding customers and staff.'* (Commission Consolidated FAQs, A.2, Q.1)

Whereas this FAQ related to the obligation to freeze assets and the prohibition to make funds and economic resources directly or indirectly available, it is similarly applicable to the trade-related sanctions covered under

Regulation (EU) 833/2014; how one should ensure compliance with those is also not specified in EU legislation. Since the publication of this FAQ in April 2022, several new guidance documents and sanctions regulations have been published, including recitals that might be used as due diligence guidance by companies trying to comply with the regulations. Neither the guidance not the recitals to Council Regulations are binding, however. It is thus still up to each EU company to determine what the appropriate level of due diligence is, calibrated according to the specificities of their business and the related risk exposure.

This response can be disheartening for those seeking detailed guidance, because it seems to leave you right back where you started from. The lack of clear guidance can be taken as proof that overcompliance is actually normal compliance, because *not* clarifying what compliance entails is a good way to ensure EU companies remain very cautious about their transactions (Hoye, 2024). At the same time it can also be seen as a recognition by the regulator that it is unable to specify what is needed in every particular case, and that each individual and company is in fact in the best position to assess the appropriate scope for its own situation. In other words, it puts the burden on the EU company but also leaves it freedom of action to determine its own approach, thereby preventing the imposition of explicit due diligence requirements that may be unreasonable for smaller companies or for certain sectors to comply with. For EU companies this can result in a paradox of choice of sorts; having options can make decisions harder and leave them less certain with what they choose.

A similar open-ended approach can be found in the EU's dual-use regulation, where it is made even more explicit. Despite some obvious differences between EU sanctions regulations and the EU dual-use regulations, they both aim to control the export of certain goods and technologies, which makes them useful for comparison. The dual-use regulation requires exporters to implement an Internal Compliance Programme ('ICP') if they want to benefit from certain simplifications offered in the regulation. In the recitals to the regulation it is explained that guidelines should be introduced '[…] in order to contribute to achieving the level-playing field between exporters and to enhance the effective application of controls. Such guidelines should take into account the differences in sizes, resources, fields of activity and other features and conditions of exporters and their subsidiaries, such as intra-group compliance structures and standards, thereby avoiding a 'one model for all' approach and helping each exporter to find its own solutions for compliance and competitiveness […].' (Regulation (EU) 2021/821, Recital 18). Under the current EU dual-use regulation as well as under the previous one, the European Commission and several member states did indeed provide such guidance, listing the core elements of an effective internal compliance programme for dual-use trade control (Commission Recommendation (EU) 2019/1318 and Commission Recommendation (EU) 2021/1700).

6. WHOSE OBLIGATION IT IS

Besides the more detailed compliance guidance available under the EU dual-use regulation, companies wanting to comply with this regulation also benefit from the fact that the dual-use regulation is narrower in scope, particularly in its definition of the addressees of its provisions. Whereas the dual-use regulation and the current EU sanctions against Russia both restrict exports, brokering services, and technical assistance, among other things, only the dual-regulation defines who it deems to be an 'exporter', 'broker', or 'provider of technical assistance' (Regulation (EU) 2021/821, Article 2). This is linked to the fact that EU sanctions regulations do not only prohibit the export, of dual-use goods for example, but also prohibit the sale, supply, transfer or export, directly or indirectly, of such goods and technology (Regulation (EU) 833/2014, Article 2). It further prohibits participating knowingly and intentionally in activities the object or effect of which is to circumvent prohibitions (Regulation (EU) 833/2014, Article 12). Thereby extending the prohibitions and related obligations to multiple parties in the supply chain and creating overlapping responsibilities. In its guidance the European Commission also explicitly recognizes that the trade related prohibitions in Regulation (EU) 833/2014 are drafted in a very broad way to ensure a maximum array of operations around an actual export or import are prohibited. (Commission Consolidated FAQs, A.1, Q.16). In

addition the same guidance document, referencing the case law of the European Court of Justice points out that sanctions need to be interpreted broadly, among other reasons in order to ensure effectiveness of the adopted prohibitions and avoid circumvention (Commission Consolidated FAQs, D.5, Q.12). Finally, this broad scope is also reflected in another FAQ in which the European Commission is asked whether an '[…] EU bank is required to screen its open account transactions for possible infringement of EU trade restrictions? If so, how must this screening be organised operationally?' (Commission Consolidated FAQs, A.2, Q.5), which led to the following answer:

> *'Compliance with trade-related sanctions (e.g. dual-use exports, oil exploration equipment, high tech goods and technology) is not limited to the operators initiating such trade (e.g. exporters, brokers…), but is also a responsibility of the banks processing the related payments. Banks can tailor their compliance programmes to specific risks identified in relation to certain transactions or parties involved, such calibration being then more risk-based than systematic.'* (Commission Consolidated FAQs, A.2, Q.5)

The answer reaffirms the room that is being given for tailored compliance measures, but at the same time it confirms the shared, or overlapping, responsibilities of different EU companies due to their broad scope. Considering that these companies should all decide for themselves what they deem appropriate measures, and considering some of the sources of overcompliance already discussed previously, it is not difficult to see how these overlapping responsibilities can become another source of uncertainty and ambiguity in practice. It is not at all clear who is responsible for what, or to what extent one can rely on assessments made by other parties in the supply chain as opposed to doing those assessments oneself. In theory every company should be able to determine its own approach, but in practice the chosen approach may not sit well with those of other stakeholders, i.e. one's customer, supplier, financial service provider, or accountant. It is also possible that the chosen approach, or the approach demanded by other stakeholders, does not match an EU companies' role and information position in relation to a particular transaction. Think of a financial service provider trying to classify its clients' products under the EU dual-use regulation, while at the same time a small manufacturing company is trying to conduct an elaborate ownership and control assessment of a potential client. It is rather obvious who is better positioned and equipped to execute each of these tasks, but in practice it often isn't clear what the division of tasks should be, if there even is such a division of tasks. Similar considerations apply to the EU based accountant, customs broker, or any other third parties that are involved in the same transaction.

The notion that responsibility for EU sanctions rests with all those subject to EU jurisdiction and that each company should decide its own approach to sanctions compliance is reminiscent of the theory of balance as used in political science. This model of balance solves the problem of power by claiming that no one has enough of it to make a real difference, leading to a situation in which 'no one is responsible for anything, and everyone is responsible for everything' (Mills, 1956, p. 17). Just as this theory of balance can be questioned by pointing out the existence of real power concentrations and dependencies that actually influence and determine certain outcomes, it is arguably the case that in practice many EU companies may decide to adapt or align their compliance measures to the approaches taken by more powerful stakeholders.

7. OVERCOMING OVERCOMPLIANCE?

The previous paragraph gives further credence to the earlier suggestion that overcompliance is 'analytically and descriptively misleading' (Hoye, 2024, p. 164), also in the context of EU sanctions. The broad drafting of provisions combined with a broad interpretation of sanctions for the purpose of effective implementation implies that much of what has been described above as potential overcompliance should actually be considered normal compliance and as a feature of the EU sanctions framework. The growing emphasis on combatting circumvention and the push

towards criminalization of sanctions violations will likely only further prompt EU companies to err on the side of caution. This would suggest that in practice there may actually be little room for EU companies to define for themselves what they consider 'appropriate due diligence calibrated according to the specificities of their business and the related risk exposure' (Commission Consolidated FAQs, A.2, Q.1).

Still, the fact that the European Commission issued more than 400 pages of guidance on EU sanctions against Russia and Belarus, and the fact that this guidance calls for tailored sanction compliance measures contests the idea that it is an *intended* feature of the EU's sanctions framework. It is true that a certain level of overcompliance is inherent and accepted in normal EU sanction compliance, as the regulation imposes an obligation of result. An EU company deciding not to do a transaction to prevent violating a prohibition or deciding to take some additional steps for this same result are indeed features of normal compliance. However, this does not mean that it cannot also be considered overcompliance beyond a certain point, which is why the word 'calibrated' is well chosen in the Commission guidance quoted just before. When an EU company succeeds in further calibrating its sanctions due diligence measures to its business scope and the related risk exposure, it may improve its posture both in areas of potential non-compliance as well as in areas of potential overcompliance.

Further confidence about the possibilities for EU companies to take control of their sanction compliance approach can be drawn from a recent judgement from the Court of Justice of the EU ('CJEU'). In Case C-109/23 ('Jemerak') the CJEU ruled on the interpretation of the term 'legal advisory services', which is included in the prohibition of article 5n of Regulation (EU) 833/2014, but not explicitly defined in the regulation. The content of the court's ruling and especially the opinion of Advocate General Medina in the Jemerak case provides a clear example of overcompliance and the feeling that 'no one is responsible for anything, and everyone is responsible for everything' when it comes to EU sanctions, while at the same time providing a strong antidote to this sentiment. It also illustrates how overcompliance can occur between EU companies with differing views on regulations.

Generally speaking, sanctions cases before the EU Courts mostly concern the annulment of designations, with only a few cases providing guidance for helping to understand and comply with EU sanctions. For these reasons, rulings like the one in Jemerak are more than welcome. The ruling resulted from a request for a preliminary ruling from a German court considering a case in which a notary refused to authenticate and execute the contract of sale of an apartment on the ground that the seller was a legal person established in Russia. The notary had indicated that he could not rule out the possibility that doing so would infringe the prohibition laid down in Article 5n(2) of Regulation (EU) 833/2014, even though a reading of the regulations and the details of the case included in the ruling of the CJEU give little reason to assume it would. The referring court pointed out several factors that argued against applying the prohibition to a notary's duties. Advocate General Medina explicitly pointed to the purpose and legislative context of the provision and noted that it should be understood as a means to prevent providers of legal services from advising Russian entities on avoiding the effects of EU sanctions. It seems that the main reason – and possibly the only reason – why the notary could not rule out the possibility that doing so might violate the prohibition was found in the fact that Commission Guidance explained that the prohibition also applied to the activities of notaries carried out on behalf of legal persons established in Russia. The referring court indicated that this guidance had given rise to uncertainty as to the correct interpretation of that provision, even though the guidance is not binding, as also explicitly stated in the guidance document:

> *'Only the Court of Justice of the EU is competent to interpret EU law. National authorities and economic operators may make use of this guidance based on the text, context and purpose of the aforementioned regulations, to achieve the uniform application of sanctions across the EU'* (Commission Consolidated FAQs, p.1).

Throughout this article we have indeed tried to use this Commission guidance in light of the text, context, and purpose of the EU sanctions regulations. For EU companies it is an invaluable source of information to assist them

in their interpretation and implementation of EU sanctions. Just as this disclaimer at the start of the Commission Consolidated FAQs, the Advocate General in the Jemerak case also explicitly pointed out the relevance of the purpose and legislative context of the provisions. Coupled with the Commission guidance that 'it is for each operator to develop, implement, and routinely update an EU sanctions compliance programme that reflects their individual business models, geographic areas of operations and specificities and related risk-assessment regarding customers and staff (Commission Consolidated FAQs, A.2, Q.1), EU companies that want to comply with the regulations should take this as an opportunity to take their responsibility. They can assess and document the scope of their role and responsibilities in light of EU sanctions on the basis of the text, context, and purpose of the sanction regulations. Although the Commission guidance states that EU companies have an obligation of result, this does not imply that EU companies should be able to rule out any and all possibility that a particular action would infringe a prohibition. Especially not if they have compelling reasons to conclude that it mostly likely does not violate a prohibition. Where a regulator decides to make more than 30 million companies jointly responsible for the implementation of, and compliance with, sanctions measures aimed at foreign policy objectives, effective implementation will depend on those EU companies wanting to comply with the regulations responsibly taking ownership of their specific part of the process. This involves investing time and resources to take responsibility for the prevention of non-compliance, and taking the responsibility to address overcompliance internally, but also in relation to other private and public stakeholders.

CONCLUSIONS

The phenomenon of overcompliance with EU sanctions, as explored in this article, reveals the complex and often ambiguous regulatory landscape that EU companies must navigate. The dual nature of EU sanctions-as both instruments of foreign policy and domestic regulatory measures-places companies in a challenging position. On one hand, they are expected to contribute to the EU's broader geopolitical objectives; on the other, they must interpret and implement intricate legal requirements in their day-to-day operations, often without clear or binding guidance.

Overcompliance arises from a confluence of factors: regulatory uncertainty, the broad and sometimes vague drafting of sanctions provisions, overlapping responsibilities among stakeholders, and the pressure to avoid even the appearance of non-compliance. This is further complicated by ethical considerations and external influences such as public opinion and the political climate, all of which can prompt companies to exceed what is legally required. The case of Carlsberg's withdrawal from Russia, driven more by societal pressure than by regulatory necessity, exemplifies how companies may go beyond compliance in response to external expectations rather than explicit legal obligations.

The article underscores that overcompliance is not merely an anomaly or a "bug" in the system, but rather a feature-sometimes even an intended one-of the EU's sanctions framework. The broad drafting and interpretation of sanctions provisions are designed to maximize their effectiveness and prevent circumvention, but they also create an environment where companies are incentivized to err on the side of caution. This tendency is reinforced by the EU's "obligation of result" approach, which requires companies to ensure that prohibited transactions do not occur, while leaving the specifics of due diligence and compliance programs largely up to individual companies.

Yet, this regulatory flexibility is a double-edged sword. While it allows, or rather forces, companies to tailor their compliance programs to their specific risk profiles and business models, it also places the burden of interpretation and implementation squarely on their shoulders. The resulting uncertainty can lead to both overcompliance and non-compliance, as companies struggle to define their roles and responsibilities, especially in complex supply chains with multiple actors and overlapping obligations.

The article advocates for a more proactive stance from EU companies. Rather than passively reacting to regulatory ambiguity or external pressures, companies are encouraged to take ownership of their compliance processes. This involves assessing and documenting their roles and responsibilities in light of the text, context, and

purpose of the relevant regulations, engaging with stakeholders to clarify expectations, and calibrating their compliance measures to balance the risks of non-compliance and overcompliance. The recent CJEU judgment in the Jemerak case illustrates the importance of such an approach, highlighting that companies should not feel compelled to rule out all possible risks of infringement, especially when a reasonable interpretation of the regulations suggests otherwise.

Ultimately, the effective implementation of EU sanctions depends on the willingness and ability of companies to engage critically and responsibly with the regulatory framework. This requires not only investment in compliance infrastructure but also a cultural shift towards embracing agency and dialogue-both internally and with external stakeholders. By doing so, companies can better navigate the inherent ambiguities of the sanctions regime, mitigate the risks of overcompliance and non-compliance, and contribute to the broader objectives of EU foreign policy without unduly burdening their own operations. The article thus concludes that while overcompliance is an inevitable aspect of the current sanctions landscape, it can-and should-be managed through informed, calibrated, and collaborative compliance strategies.

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