FROM SANCTIONS TO INVESTIGATIONS

CIFAR RESEARCH PAPER

CIFAR.EU

This publication was made possible thanks to the support of:

NATIONAL ENDOWMENT FOR DEMOCRACY
SUPPORTING FREEDOM AROUND THE WORLD

FROM SANCTIONS TO INVESTIGATIONS

LEGISLATIVE, POLICY AND PRACTICAL TOOLS TO INVESTIGATE THE ORIGINS OF SANCTIONED ASSETS

Paper prepared by Lucia Cizmaziova (CiFAR) and reviewed by Anton Moiseienko, and Jackson Oldfield (CiFAR). The author has made reasonable steps to ensure that the content is accurate.

Published: 2023, CiFAR – Civil Forum for Asset Recovery e.V.
CiFAR – Civil Forum for Asset Recovery e.V.
Köpenicker Str. 147, Berlin, Germany, cifar.eu

Cover picture: provided by Pixabay through a Pixabay Licence for free commercial usage without attribution.

CONTENTS

GLOSSARY

The following definitions should be understood within the context of this report as they can vary across different jurisdictions.[1]

Asset freezing is the temporary prevention of the transfer, disposition, or movement of an asset imposed by a competent authority. It is typically used to prevent criminals from accessing and using their assets while an investigation is ongoing or while they are awaiting trial. Financial sanctions imposed on private individuals also very often take the form of an asset freeze.

Seizure is the physical appropriation of property (including cars, yachts, or artwork) by a law enforcement agency. It is typically used to prevent criminals from destroying or disposing of evidence, to protect victims, and to ensure that assets can be forfeited or confiscated if the defendant is convicted.

Forfeiture is the transfer of ownership of an asset from an individual to the government. It is typically used in cases where the property is directly linked to a crime, such as corruption, the drug trade or the proceeds of tax evasion.

Confiscation is the permanent deprivation of property by order of a court or other competent authority. It is typically used after a criminal conviction, and it can be used to punish the defendant, deter crime, and compensate victims.

EXECUTIVE SUMMARY

Targeted asset-freezing sanctions have increasingly been debated as a measure that could trigger the opening of law enforcement investigations and eventual asset confiscation proceedings against sanctioned individuals in the sanctioning jurisdictions, in cases when it is suspected that sanctioned assets are a result of corruption. Traditionally seen as a temporary foreign policy measure, sanctions are now being viewed, therefore, as a potential stepping stone towards permanent asset forfeiture through judicial proceedings.

Russian sanctions imposed following the invasion of Ukraine have highlighted the urgent need to address the identification and confiscation of sanctioned assets and triggered innovation in sanctions policies and practices. Alongside existing investigative practice by law enforcement, several new national and international initiatives have been established with the aim of speeding up the confiscation of frozen assets, such as the U.S. KleptoCapture Task Force and the EU's operation OSCAR.

What has been particularly new is political will to proactively investigate and pursue frozen assets by sanctioning countries. This also stems from the fact that these sanctions have been imposed on individuals who are still in power and, therefore, cooperation with Russian authorities over the confiscation of these assets is unimaginable. Investigations are the first step on the way from a temporary asset freeze to a permanent asset confiscation or forfeiture in a way that is compatible with current legal practice and the rule of law.

The focus of this paper is on investigations which can lead to criminal, civil, or administrative proceedings being brought against a sanctioned individual on the basis of their frozen assets. These proceedings can relate to 1) assets that are identified to be the proceeds of crime, 2) assets that are involved in sanctions violations, or 3) the unexplained wealth of sanctioned individuals more broadly.

This paper discusses the importance of investigations as a first step and a sustained move in the process of confiscating sanctioned assets. It examines the laws, policies, and practices of eight major sanctioning jurisdictions to assess the extent to which they provide for the triggering of investigations after asset freezing sanctions are imposed: Canada, France, Germany, Italy, Spain, Switzerland, the United Kingdom (UK), and the United States (US).

It provides an overview of asset freezing sanctions, why are they imposed and how they are linked to asset recovery. It also makes the argument for why sanctioning jurisdictions should start investigations into sanctioned assets. The focus of the analysis relates to corruption investigations, but the findings are applicable to other crimes that may be linked to sanctioned assets, such as drug trafficking.

When looking at legislative and policy frameworks, as well as practice that would encourage the start of investigations of assets linked to sanctioned individuals, this report looks particularly at the 1) the existence of specific legislation or policy connecting sanctions to the opening of anti-corruption investigations; 2) the existence of an (inter)agency task force or department tasked with investigations into sanctioned assets; 3) evidence of investigations taking

place into sanctioned assets; 4) evidence of investigations taking place into suspected sanctions violations 5) membership in the international Russian Elites, Proxies and Oligarchs (REPO) Task Force focused on asset freezing and confiscation.

Law enforcement authorities in all examined jurisdictions have the capabilities and legal pathways available to pursue sanctioned assets if the evidence shows that they might have been acquired via illicit means or are the result of illicit activities. However, and despite a growth in expectation, until now corruption investigations linked to sanctioned assets have happened only in a handful of cases, and only in three out of the eight jurisdictions reviewed here. There is also a lack of clear legislative or policy guidance that would encourage law enforcement authorities to proactively look for evidence of the criminal origin of sanctioned assets. Without this, anti-corruption investigations into unexplained wealth of sanctioned individuals seemingly do not happen.

This report therefore concludes by suggesting that sanctioning jurisdictions adopt new legislation or policy, or issue guidance, to encourage law enforcement authorities to actively investigate the origins of assets that have been temporarily frozen by sanctions, when it is suspected that sanctioned assets are the proceeds of crime. It also suggests it would be important to establish permanent inter-agency task forces or other forms of communication channels to enhance collaboration between agencies implementing sanctions, tracing sanctioned assets and law enforcement, and argues that there is a need to foster cross-border collaboration across partner jurisdictions.

Ultimately, sanctioning persons suspected of having obtained their wealth through corruption sends a message that that behaviour will no longer be tolerated. Without an investigation into the origins of those assets, however, it risks being only a temporary message, in the sense that the sanctions will one day be lifted and the assets returned to those individuals. Making a firm link between the imposition of sanctions and the opening of investigations into the origins of those sanctioned assets, on the other hand, demonstrates commitment to addressing the root cause of illicit wealth and depriving corrupt individuals of their ill-gotten gains. While progress is being made in that direction, it is only the beginning of the journey and sanctioning jurisdictions need to step up to truly address cross-border corruption.

INTRODUCTION

The fight against illicit financial flows poses a global challenge for policy makers and law enforcement officials. The effect of missing public resources, whether due to corruption, tax evasion or other crimes can be felt beyond the country where the crime occurred. Illicit finance also harms countries where the funds are laundered and invested, creating opportunities for corruption, the exertion of undue influence and negatively impacting democratic structures. The impact of illicit finance on national and global security has come into sharp focus in the aftermath of the 2022 Russian invasion of Ukraine. Governments in many jurisdictions imposed financial sanctions, freezing the assets of designated individuals and entities to restrict the flow of funds that could be used to fuel the conflict and to put pressure on Russia. Since then, several sanctioning governments have also been looking for ways to confiscate Russian assets, especially those that might be of illicit origin.

This comes at a time where there has been increasing debate in certain jurisdictions over the use of targeted sanctions as a starting point for asset confiscation proceedings, particularly when it is suspected that sanctioned assets are the result of corruption or other crime. Traditionally seen as a temporary foreign policy measure, sanctions are increasingly being discussed as a potential stepping stone on the path to permanent asset forfeiture through judicial proceedings.[2] The "freeze to seize" debate around Russian private and state assets have formed an important part of this discussion, which has seen a number of proposals made for how states could confiscate sanctioned assets.[3] To date, however, in most jurisdictions, the only way to move from a temporary asset freeze to permanent confiscation or forfeiture is through triggering criminal and civil investigations that lead to court judgements.

The context of this debate is important. The recovery of at least some frozen assets was similarly expected after sanctions were imposed by the EU and Switzerland in the aftermath of the revolutions in Egypt (2011), Tunisia (2011), and Ukraine (2014). A core aim of these so-called misappropriation sanctions[4] was to allow enough time for law enforcement in the countries of origin to prosecute sanctioned individuals and investigate the origin of their assets. Little however has been returned. On the one hand, this is because the post-revolutionary governments were not able to successfully prosecute the former ruling elite for their corrupt behaviour - one of the reasons for their overthrow. On the other hand, and important for current discussions, however, is that the sanctioning countries also did not prioritise their own asset recovery proceedings,[5] including opening investigations into the origins of sanctioned assets in their jurisdictions.

The Russian invasion of Ukraine has brought new momentum to the debate about the potential to confiscate sanctioned assets.[6] What has been particularly new is the political will to systematically investigate and pursue frozen assets proactively by the sanctioning countries. This also stems from the fact that these sanctions have been imposed on individuals who are still in power or who continue to enjoy political support in Russia. Therefore, any cooperation with Russian authorities over the confiscation of these assets is unimaginable.

This paper aims to deepen this debate and chart a possible course for a sustained move from sanctions to anti-corruption investigations. It does so by analysing laws, policies, and practices of eight major sanctioning jurisdictions to assess the extent to which they provide for the triggering of investigations after asset freezing sanctions have been imposed. The jurisdictions considered are Canada, France, Germany, Italy, Spain, Switzerland, the United Kingdom (UK), and the United States (US).

While this paper considers and at times highlights the various legislative mechanisms through which asset confiscation can take place across these countries, it does not attempt to identify the best confiscation mechanism linked to sanctions. Rather, it aims to contribute to the 'freeze to seize debate' in the context of Russian sanctions and any future sanctions by placing a focus on the crucial first step on the way to any possible asset recovery – the initiation of investigations linked to sanctioned assets.

The first part of this paper describes asset freezing sanctions, why are they imposed and how they are linked to asset recovery. It also makes the argument for why sanctioning jurisdictions should start investigations into sanctioned assets. The second part then provides an overview of legislative and policy tools across key sanctioning jurisdictions that link sanctions to law enforcement investigations into sanctioned assets and identifies examples of practice where it exists. It also considers regional initiatives which aim to support coordination of efforts between sanctioning jurisdictions. The paper concludes by summarising the opportunities and challenges countries face in linking sanctions to investigations and where we are now when it comes to the reality of freeze to seize.

INVESTIGATING ASSETS LINKED TO SANCTIONED INDIVIDUALS

BACKGROUND & JUSTIFICATION

WHAT ARE ASSET FREEZING SANCTIONS?

Asset freezing sanctions are a type of sanction that temporarily restrict access to bank accounts and other assets. They can be applied to individuals, corporate entities and States as a whole. For the purposes of this publication, only asset freezes concerning individuals and corporate entities are discussed.[7]

In practice, the imposition of sanctions then typically means that any assets, be it financial assets, moveable or immovable property or other, cannot be made available to the individual or entity, nor can they benefit from them in the form of receiving rents, for example.[8] The assets are frozen and unusable except for specific purposes while the sanctions are in place. This process does not, however, mean that assets are permanently confiscated or change ownership.[9]

Individual asset freezes are a highly targeted, specific subset of sanctions. There are many different forms of sanctions, which range from such targeted or "smart" measures, to broader diplomatic, economic and trade embargoes imposed on whole sectors of trade, economic or cultural activity. Over the years, there has been a shift from broad economic sanctions towards these targeted sanctions that address the wrongdoing of a certain group, individual or a business entity. This evolution is a result of evidence that wide economic sanctions imposed on a country as a whole can inflict substantial harm on the general population, with the aim with individual asset freezes being to target and impact only the group of responsible individuals, often the ruling elite itself.[10]

Traditionally, sanctions regimes have been designed and organised as "country" regimes, which designate individuals suspected of wrongdoing linked to a particular jurisdiction. For instance, the EU imposed targeted asset freezes through a country-level regime during Egypt's political revolution in 2011. With the rise in targeted sanctions, there has, however, been an increased use of "horizontal" sanctions lists, which do not refer to a specific country, but rather target individuals and entities based on a thematic principle, such as their involvement in grand corruption, human rights abuses or cybercrime. These horizontal sanctions regimes do not make an explicit link to a country and are particularly suitable for tackling transnational challenges, such as corruption.[11]

WHY ARE ASSET FREEZING SANCTIONS IMPOSED?

Asset freezing sanctions, like sanctions in general, have diverse objectives. Some key overarching objectives usually mentioned in the literature are:

1. to change the behaviour of the target,
2. to disrupt the target's malicious activities, and
3. to signal disapproval by the sanctioning jurisdiction.[12]

Objectives related to this include whether sanctions are intended to force change, affect domestic policy or international reputation, or uphold international norms and order.[13]

The reasons and objectives behind the imposition of sanctions are important for the purposes of this paper from a practical perspective: due to the impact that the reasons and objectives for imposing asset freezing sanctions may have on the likelihood of an investigation being started into the origins of sanctioned assets.

Allegations of corruption can be the reason for the imposition of targeted financial sanctions both via country regimes, as well as horizontal sanctions regimes specifically targeting corrupt actors globally. An important development in the use of horizontal sanctions has been the rise of Magnitsky style sanctions that are imposed horizontally to address corruption.

Originating in the US, these sanctions exist now in several jurisdictions in Europe and beyond and are designed to impose asset freezing sanctions on persons suspected of high-level corruption.[14] While targeted anti-corruption sanctions have been used as a foreign policy tool, these sanctions are often linked to allegations of criminal wrongdoing and increasingly debated as a measure that could trigger investigations and asset confiscation proceedings linked to sanctioned individuals by the sanctioning jurisdictions.

Because these type of sanctions are imposed by governments as a response to suspected criminal behaviour, scholars are starting to emphasise their role beyond foreign policy objectives, and into questions over behavioural change and the disruption of activities through criminal proceedings.[15] Whether or not sanctions are seen as a tool of criminal justice, the fact that there is suspected underlying criminal activity in applying anti-corruption sanctions and that the designations need to fulfil some, albeit low, evidential standard, raises the question of whether the origins of these assets should be investigated in sanctioning jurisdictions.

FROM ASSET FREEZING SANCTIONS TO INVESTIGATIONS AND ASSET RECOVERY

The imposition and removal of sanctions are political decisions targeting the assets of a designated person or entity within a jurisdiction. They are administrative measures that are not linked to specific assets or to ongoing investigations. This is in contrast to judicial asset freezing measures that require the approval of a court and are bound by rules relating to legal processes.[16] The imposition of asset freezing sanctions are then legally distinct from asset freezing measures in corruption investigations and subsequent confiscation and recovery proceedings.[17] Assets frozen by sanctions can however become the subject of investigations and legal proceedings that question the legitimacy of their origin.

This idea behind the imposition of sanctions took place with the imposition of the misappropriation sanctions, imposed by Switzerland and the European Union to freeze assets relating to the former ruling elites in the aftermath of the revolutions in Egypt (2011), Tunisia (2011), and Ukraine (2014). Alongside signalling support to the new post-revolution governments, the core aim of these sanctions was to allow enough time for the law enforcement in Egypt, Tunisia and Ukraine to prosecute sanctioned individuals and investigate the origin of their assets.[18] The burden to gather evidence, open investigations and prosecute the sanctioned individuals therefore lay with the countries of origin. The role of the sanctioning jurisdictions was only to sanction the leaders, freeze assets relating to them, and wait for the result of the legal proceedings in foreign jurisdictions. As explained by then European Union High Representative for Foreign Affairs Catherine Ashton,

> *the frozen assets cannot just be released [to the new governments]; first ownership must rightfully be transferred to the new state structures.*[19]

The EU intended to therefore keep the sanctions in place and lift them only once confiscation orders were received and adjudicated on from the three countries of origin.[20] As such, while the recovery of assets and their restoration to originating countries constituted one of the ultimate objectives of these restrictive measures, the EU was not trying to proactively identify if the assets might be subject to confiscation within the legal frameworks of EU Member States. Rather, asset freezes were aimed at preventing dissipation of the assets by deposed leaders and were framed as a prerequisite for later asset recovery following investigations, prosecutions and convictions by Egypt, Tunisia and Ukraine.

However, while these asset freezes where followed up by a formal request for mutual legal assistance from the law enforcement authorities in countries of origin and a number of investigations were opened, only very few ended up in a conviction or successful asset recovery.[21] The reasons were multiple, from the lack of political will and appropriate structures to support investigation of these assets, to the inability to successfully prosecute the former ruling elite by the judiciary in the countries of origin undergoing political transitions.

While the recovery of stolen assets wasn't a stated reason for sanctioning Russian individuals following the invasion of Ukraine, it has generated considerable public and political interest. A major difference in this case has been that the growing assumption now that sanctioning countries should investigate and pursue these assets proactively themselves. This also stems from the fact that these sanctions have been imposed on individuals who are still in power or who continue to enjoy political support in Russia. Therefore, cooperation with Russian authorities over the confiscation of these assets is not a possibility.

The so-called "freeze to seize" debate[22] has then attempted to answer the question of how to quickly confiscate sanctioned assets of Russian oligarchs that are held within the sanctioning jurisdictions, as well as how to do this in a way that is compatible with legal norms, including human rights law.[23] Various legislative and political tools have already been considered, but no new mechanism that could replace criminal or civil proceedings has been tested successfully so far.

Therefore, the answer to confiscation within the freeze to seize debate remains through established criminal, civil or administrative proceedings into the origins of assets frozen by the sanctioning jurisdictions.[24] The choice of one of these measures over another would depend on the availability of these measures in a particular jurisdiction and the outcomes of a financial

INFO BOX 1: Criminal, civil or administrative proceedings?

Even though all jurisdictions have mechanisms that would enable the permanent confiscation of assets after a **criminal conviction**, it can be challenging to prove the underlying crime to the high standards needed for a criminal conviction, particular where it occurred outside of the sanctioning jurisdiction.

If law enforcement lacks sufficient evidence to meet a criminal standard of proof, or deems it inefficient in the particular case, it may opt for **civil proceedings**, which require a lower standard of proof. In this case, law enforcement might only be required to prove that sanctioned assets likely represent the proceeds of criminal activity, rather than proving a crime occurred itself. However, in practice, civil proceedings might face the same challenges that occur during criminal prosecution, including a certain level of cross border cooperation to be successful in obtaining sufficient evidence.

Finally, **administrative proceedings** which sometimes do not require judicial decision to confiscate assets may exist that can meet the challenges of securing criminal convictions.

THE BASIS FOR AUTONOMOUS INVESTIGATIONS INTO SANCTIONED ASSETS

Where evidence of possible corruption is identified when imposing sanctions or during administrative investigations into the assets of designated individual, or when evidence of potential evasion of sanctions is found, investigations by law enforcement can – and should – be triggered. These investigations can form the basis for legal proceedings that target the assets frozen by the sanctions or can target the broader unexplained wealth of sanctioned individuals. These proceedings and assets they target can be grouped into three different categories:

1. Assets involved in sanctions violations,
2. Assets linked to criminal activity,
3. Unexplained wealth more broadly.[25]

ASSETS INVOLVED IN SANCTIONS VIOLATIONS

Monitoring for sanctions violations is often the most straightforward approach for law enforcement. As it focusses on legal violations post-sanctions designation and does not look into the origins of the assets, it circumvents the challenges of linking sanctioned assets to prior criminal activity and instead focusses on actions taken to avoid sanctions once designated. In some countries, not adhering to sanction designations constitutes a civil offence, in others it is a crime. Depending on the jurisdiction, fines will typically be levied related to the value of assets involved in the violation.[26]

ASSETS LINKED TO CRIMINAL ACTIVITY

Another route of going after the assets of sanctioned individuals is to follow any evidence that assets might be the proceeds of, or involved in the commission of, crime. This could include, for example, corruption or organised crime and might not be related to the focus of the sanctions regime. As discussed above, an example of where assets might be pursued on the grounds of suspected underlying corruption and money laundering could be the case of Russian sanctions, even though they were imposed on the grounds of the violation of Ukrainian territorial integrity.[27]

UNEXPLAINED WEALTH

The third approach to pursuing assets of sanctioned individuals in a particular jurisdiction is to approach them as designee's potential unexplained wealth. If assets appear to be derived from unlawful sources, and it is difficult to establish a clear link between the assets or a person and the underlying criminality, jurisdictions have the possibility to use unexplained wealth or illicit enrichment legislation. This type of legislation can shift the burden of proof onto the defendant to prove that their assets in fact have been derived from licit sources.[28] If the provided evidence is insufficient, authorities can then commence proceedings to confiscate the assets.

THE RATIONALE FOR SANCTIONING JURISDICTIONS TO OPEN INVESTIGATIONS INTO SANCTIONED ASSETS

Sanctioning countries committed to the fight against corruption should seize the opportunity to investigate sanctioned assets within their jurisdictions. Otherwise, these assets may ultimately be released, after being frozen for an extended period of time, and returned to those suspected of acquiring them illicitly. By quickly freezing the assets of individuals suspected of criminal behaviour, sanctions create a unique opportunity for law enforcement in the sanctioning countries to have time to scrutinize the origin of such assets and launch investigations into their origin. In this way, sanctions can form a part of a broader governmental anti-corruption strategy.[29]

Lessons from the misappropriation sanctions imposed in 2011 and 2015 have shown that if the country where the initial act of corruption occurred cannot launch a successful investigation and convict those involved, assets frozen under sanctions may be returned to individuals suspected of having obtained them through criminal means after the sanctions have run their course and are lifted. While it is important to support countries of origin, especially by providing technical and financial resources to those without strong asset recovery offices and adequate legal frameworks, this might not always be the most effective course of action. Opening of investigations in the sanctioning jurisdiction or conducting parallel investigations in both jurisdictions may increase the chances of a successful confiscation.

Particularly in the cases of non-cooperative jurisdictions, sanctioning countries will need to take the lead in investigating potentially illicit foreign assets. This is not an easy task, as gathering sufficient evidence proving criminality relating to powerful political and business elites,[30] or potential acts of corruption occurring years or decades in the past, is extremely difficult.[31] However, a number of countries have promising legal approaches to do this, especially where crimes may have been committed in introducing those assets into the sanctioning jurisdictions.

EVIDENCE SUGGESTING THE ILLICIT ORIGIN OF SANCTIONED ASSETS

For asset freezing sanctions, the evidence prompting a financial investigation may depend on:

1. Evidence found during administrative asset-tracing investigations,

2. Information gathered prior to designation that served as evidence for the designation.

An important question to consider when thinking about investigations into sanctioned assets and assets linked to sanctioned persons and entities is, therefore, the reason why they were included on the sanctions list. This justification may indicate that there is evidence of criminal activity that could be used as a basis for prosecution and confiscation proceedings.

CORRUPTION-FOCUSED SANCTIONS

While corruption as a reason for imposing sanctions can occur in ad hoc cases within a wider country sanctions regime, such as the designation of certain Lebanese officials in the framework of the US sanctions regime against persons contributing to the breakdown of the rule of law in Lebanon,[32] several specific-corruption focused sanctions regimes exist. The most prominent horizontal regimes focused solely on corruption or on corruption together with human rights are those adopted by Canada, the EU, Switzerland, the UK, and the US.[33]

In the case of sanctions designations which target individuals for their alleged involvement in corrupt activities, the design of the legislation presupposes the existence of at least some evidence against the individual or entity being listed. The legal threshold for this evidence is generally quite low. For example, the UK's 2021 Global Anti-Corruption Sanctions Regulations, which is the basis for its targeted Magnitsky-style sanctions regime, enables the government to sanction individuals when it has "reasonable grounds to suspect" that they were involved in serious corruption, bribery or misappropriation of property either directly or indirectly through supporting, concealing, benefitting from, or failing to properly investigate such acts of corruption.[34]

The low threshold and unclear criteria for including some individuals on sanctions list are sometimes criticized for a lacking due process, which "enable governments to impose hardship on someone whom they may have wished to see prosecuted had it not been for insufficient evidence".[35] But while the lower legal threshold for the imposition of sanctions means that the evidence gathered will likely not be enough for a prosecution, it could form the basis for more comprehensive investigation.

Even though the evidence for sanctioning is not typically published, sanctioning jurisdictions often at least publish some of the reasoning that led to someone's designation in the sanctioning legislation, with further explanatory and background information often stated in accompanying press releases. For instance, a Moldovan businessman and a former politician Vladimir Plahotniuc, appears on the UK and US Magnitsky sanctions lists for

corruption reasons. The US was first to sanction the businessman in October 2022, and published a couple of paragraphs of background reasons that allege Plahotniuc's engagement in "state capture by exerting control over and manipulating key sectors of Moldova's government, including the law enforcement, electoral, and judicial sectors".[36] The UK designated Plahotniuc in December 2022 because of his alleged involvement "in serious corruption with respect to bribery of a foreign public official".[37]

The Canadian government has also published short backgrounders on groups of individuals it has designated under its Justice for Victims of Corrupt Foreign Officials Act in the past. However, the grouped information is limited to a length of a paragraph and does not always make it clear which individuals are sanctioned for the reasons of corruption and which for human rights, or both.[38]

Based on what we do know, authorities in sanctioning jurisdictions are able to gather information which can serve as basis for a designation and could be a springboard for further evidence gathering. Alongside open-source and media information, private intelligence gathering via police and secret services, authorities in many jurisdictions also accept information from citizens and civil society. Potential evidence of corrupt activities can be channelled to authorities both responsible for making sanctions designations or to those responsible for investigating crimes. This can be done via open public communication frameworks, like the one offered by the US Global Magnitsky legislation[39] or via established partnerships between authorities and civil society organisations.[40]

SANCTIONS NOT FOCUSED ON CORRUPTION

While sanctions which are designed to target corrupt individuals are inherently accompanied by at least some evidence that could point to financial misconduct and lead to a potential investigation being opened, with other thematic sanctions this is most often not the case. This means that, even though such sanction lists might contain individuals who have acquired their wealth illegally, it might also contain people who did not.

For example, the sanctions imposed on Russian individuals after the invasion of Ukraine have been accompanied by a lively debate about the wealth of questionable origin of sanctioned oligarchs and the potential to confiscate at least part of this wealth to support Ukraine. However, targeting corruption was not a primary objective of these sanctions. The EU, for example, sanctioned individuals under Council Regulation (EU) No 269/2014 of March 2014, who the EU Council believed were "responsible for actions which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine."[41] The sanctions list contains names of known Russian billionaires and businessmen, such as Alisher Usmanov and Igor Sechin,[42] but also contains a number of low-ranking individuals where the reason behind their designation is not entirely clear.

In practice, these extensive sanctions lists may lack information on the potential financial misconduct of the sanctioned individuals or entities. While countries can investigate individuals, whether sanctioned or not, for corruption, money laundering or similar crimes, sufficient evidence is required to initiate an investigation. In the cases of individuals designated under the sanctions regimes that do not focus on acts of corruption, law enforcement authorities

would most often be starting with less evidence of corruption than under anti-corruption sanctions designations. However, providing that evidence of criminal conduct of individuals sanctioned emerges, investigative proceedings could also be initiated in these cases, even though they have been sanctioned under regimes not predicated on allegations of criminal conduct.

FRAMEWORKS FOR INVESTIGATION INTO SANCTIONED ASSETS

OVERVIEW

In order to better understand the links between sanctions and corruption investigations in sanctioning jurisdictions, the following section looks at their legislative and policy frameworks that support – or could be used to support - investigations into the origins of sanctioned assets, alongside evidence of successful implementation of relevant legislation and policy through the existence of active investigations.

Jurisdictions analysed are: Canada, France, Germany, Italy, Spain, Switzerland, the United Kingdom (UK), and the United States (US). As a note here, even though the European Union adopts sanctions at the EU level, each respective Member State is responsible for their implementation and enforcement and therefore key EU Member States are analysed separately.

Considering that the pressure to investigate and confiscated sanctioned assets has emerged particularly after the Russian invasion of Ukraine, which prompted several countries to adopt new legislation and polices, the focus of the analysis is primarily on developments after March 2022 in relation to Russian assets.

When looking at legislative and policy frameworks that would encourage the start of investigations of assets linked to sanctioned individuals, as well as practice, this report looks particularly at the following criteria:

1. The existence of specific legislation or policy connecting sanctions to the opening of anti-corruption investigations
2. Known investigations into sanctioned assets that are suspected to be the proceeds of crime
3. Known investigations of suspected sanctions violations related to asset-freezing sanctions
4. The existence of an (inter)agency task force or department tasked with investigations into sanctioned assets
5. Membership in the international Russian Elites, Proxies and Oligarchs (REPO) Task Force

CANADA

Canada lacks legislation or policy requiring or encouraging investigations into sanctioned assets. The full-scale Russian invasion of Ukraine prompted the adoption of an innovative law that enables the direct confiscation and repurposing of assets frozen under sanctions.[43] There are two ongoing cases under this new law but no known criminal or civil proceedings into the potential illicit origin of sanctioned assets.

Legislative and institutional framework

Shortly after the 2022 Russian invasion of Ukraine, the Canadian parliament adopted the C-19 Budget Implementation Act which allows judges to forfeit sanctioned assets owned directly or indirectly by sanctioned individuals or states on the application of the Minister of Foreign Affairs.[44] The C-19 Budget Implementation Act amended two existing Canadian sanctions regimes: the 1992 Special Economic Measures Act (SEMA)[45] and the 2017 Justice for Victims of Corrupt Foreign Officials Act (Magnitsky Act).[46]

- SEMA allows the Canadian government to impose sanctions on states and individuals for breaching international peace and security and was the sanctions legislation of choice to impose sanctions on Russian oligarchs after the invasion of Ukraine.
- In contrast, the Justice for Victims of Corrupt Foreign Officials Act enables the Canadian government to impose targeted sanctions on individuals and entities for human rights violations and involvement in significant acts of corruption. It has been used to sanction Russian individuals accused of human rights abuses in the past.

The Canadian Foreign Affairs Minister emphasised her intention to use the new legislation to confiscate the assets of Russian people who have been sanctioned at the time of its passage.[47] However, there have only been two known cases testing this new tool, both under the SEMA regime. In the first case, Canadian authorities are attempting to forfeit USD 26 million from Granite Capital Holdings, owned by sanctioned oligarch Roman Abramovich.[48] The second case is linked to a Russian aircraft: An-124-100-150 in Lester B. Pearson International Airport in Toronto.[49]

The confiscation (in Canada referred to as a forfeiture) process under this new legislation contains two steps. Firstly, a Governor-in-Council Order is issued to seize or restrain targeted property or assets. After obtaining this order and securing the asset, the Minister of Foreign Affairs may then apply to the provincial court where the asset is located for an order requesting its permanent forfeiture.[50]

A little later then its allied sanctioning jurisdictions from G7 countries, Canada also established an interdepartmental committee, mandated to oversee the implementation of Russian sanctions. Concretely, the committee aims to "review and analyse potential assets in Canada and make recommendations under Canada's new asset forfeiture authorities".[51] Co-chaired by Global Affairs Canada and the Department of Finance, it also includes representatives from Public Services and Procurement Canada (PSPC), the Department of Justice, Public Safety Canada, the Canada Border Service Agency and the Royal Canadian Mounted Police (housing the Sanctions Unit).

Investigations into assets linked to sanctioned individuals

The new legislation allowing direct confiscation of sanctioned assets introduced by the C-19 Budget Implementation Act has taken centre stage in the Canadian sanctions debate. While one of its kind among the G7 countries, these amendments are not without questions about their compatibility with the right to property.[52] Whether they will be accepted by the courts and whether they can succeed in confiscating sanctioned assets need to be tested in practice.

Despite the prominence given to the topic with the introduction of the new law, little attention has been given to using existing criminal or civil asset recovery tools, with no known targeting of the assets of sanctioned individuals using such tools.[53] If at any point in the future authorities decide to open such an investigation, it is highly likely that they would pursue non-conviction-based forfeiture, rather than a confiscation via criminal proceedings. Similarly to other jurisdictions, this would allow law enforcement officers to alleviate hurdles over cooperation with their foreign counter-parts or having to physically bring the accused individuals in front of the Canadian courts.[54]

Canada has limited experience in prosecuting sanctions violations, with only a handful of prosecutions over violations of sanctions in Canada taking place in the past.[55] An example of this is the 2011 police investigation into an attempt to ship dual-use items to Iran through Dubai.[56] More recently, in the R. v. Kalai case, an individual was accused of making an investment in Syria. This however resulted in an acquittal in 2020 due to lack of evidence.[57] There are no known cases of prosecuting sanctions violations that have started in the past couple of years, whether related to Russian sanctions or other sanctions regimes.

Relatively low amounts of assets have been frozen in Canada in relation to sanctions on Russia after 2022. The reported estimate is around USD 90 million.[58] Canadian authorities face a considerably high caseload, together with challenges in accessing information on both the beneficial owners of real estate, as well as companies, due to the lack of a centralised register.[59] To overcome some of these challenges, legislation introducing a free, publicly accessible beneficial ownership registry of corporations, which contains a basic data verification, as well as an error-flagging mechanism, was adopted in November 2023.[60] This is key to effectively trace and freeze assets that should be sanctioned and to identify potentially illicit assets. However, it is not clear if the new register will also include information on beneficial owners of trusts and partnerships. Furthermore, the vast majority of businesses are incorporated in Canada at the provincial level, and therefore, the federal registry is perceived as a starting point, which will hopefully be able to connect with provincial registers in the future.[61]

FRANCE

France does not have a stand-alone policy prompting investigations into assets frozen under sanctions, but it has used its existing legal provisions to conduct at least 17 investigations into Russian assets.[62] These investigations were encouraged by legal action tabled by the French NGO Transparency International France for money laundering and related offences, targeting Russian oligarchs. The investigations also follow guidance issued by the Ministry of Justice, asking authorities to prioritise investigating alerts and suspicious transactions reports regarding Russian assets and to utilise French anti-money laundering provisions in order to overcome the known challenges with autonomous investigations of foreign PEPs.

Legislative and institutional framework

To highlight the high political priority placed on investigating the sanctioned assets of Russian oligarchs, the French Minister of Justice issued a Circular on the handling of proceeds involving Russian interests in the context of international sanctions against the Russian Federation on the 3rd of March 2022.[63] The Circular called on the relevant judicial authorities to firstly cooperate with other governmental agencies working on tracing Russian assets of possible illicit origin, and secondly to focus on prosecuting money laundering offenses or breaches of these asset freezes.

In practice, the Circular asked judicial authorities to prioritise alerts and suspicious transactions reports linked to Russian assets that are passed on from the French Intelligence Unit - Tracfin, aiming to support "a systematic opening of legal proceedings".[64] Tracfin receives such information mainly from suspicious transaction reports from financial entities subject to anti-money laundering regulations and has the authority to pass these on to judicial authorities and to the criminal investigation departments.

In order to aid in the identification, freezing and the potential seizure of Russian assets in France, an inter-ministerial working group established between the Public Finance Department at the Ministry of Economy and Finance, Tracfin, and the Customs Department was created. The activities of this task force focus not only on the sanctioned individuals but also on their partners, family members and companies.[65]

Upon receiving alerts of Russian assets that might be "held in France under illicit conditions", the Circular then calls on the relevant authorities to utilise Article 324-1-1 of the French Penal Code when opening investigations that would demonstrate the offence of money laundering.[66] This law introduces the presumption of money laundering in cases when "the property or income is presumed to be the direct or indirect proceeds of a crime or offense when the material, legal or financial conditions of the investment, concealment or conversion operation have no other justification than to conceal the origin or beneficial owner of such property or income".[67] Therefore, French authorities can treat and prosecute money laundering as a stand-alone offence even without the need to prove the underlying predicate offence – particularly useful in cases where the offence might have happened in a foreign jurisdiction like Russia.

The establishment of money laundering offences in French legislation, and its operationalisation by the French courts, is a potentially powerful tool to prosecute opaque financial structures that are often

used by criminals worldwide to hide the illicit nature of their assets.[68] While the existence of a complex financial scheme or the use of a tax haven as a place to register a corporate entity is not itself criminalised if economic reasons can be demonstrated, if an objective justification for the transaction is lacking, it is seen as an evidence of money laundering.

Sanctions evasion in France can be prosecuted based on article L574-3 of the French Monetary and Financial Code, which refers to the provisions established in the Customs Code.[69] In cases where an individual fails to comply with sanctions freezing orders, they can face a prison sentence of five years, confiscation of property and assets which are the direct or indirect product of the offense and a fine, set, at most, at double the amount of the attempted infringement.

Investigations into assets linked to sanctioned individuals

The above-mentioned French legal provisions are currently being tested in relation to sanctioned individuals in courts through 17 criminal proceedings concerning Russian individuals. The impetus for these proceedings has been evidence and legal complaints put forward by Transparency International France[70] against five of these individuals for "money laundering, non-justification of resources, stolen goods and complicity in these three offenses" at the National Financial Prosecutor's Office (Parquet National Financier, PNF).[71]

The evidence tabled by the NGO opened the door for the French prosecutors to proceed further with their own investigations and led to them subsequently filing an investigation into illicit assets against 17 Russian individuals.[72] This coordinated action is a good example of how non-governmental actors can support the investigative process via evidence-gathering and by bringing this evidence forward to law enforcement officers. Little information has been published to date regarding who these investigations concern.

Separately, the National Jurisdiction in Charge of the Fight Against Organized Crime (JUNALCO) of the Paris prosecutor's office has successfully seized a villa owned by Viktor Rashnikov, the boss of one of the largest steel producers in Russia.[73] While Rashnikov's three properties in France officially linked to him had been administratively frozen since he was placed on the sanctions list, this villa initially escaped the French authorities. The villa - not held under Rashnikov's name but rather a Swiss company, further owned by a Panamanian entity - highlights challenges the French authorities grapple with to track all relevant assets that should be frozen. Because the villa was not declared to the French authorities as Rashnikov's property, it did not appear in the French beneficial ownership registry and it was not frozen immediately after the sanctions were imposed.

Additionally, in autumn 2023, the French Justice seized real estate property belonging to sanctioned Alexander Pumpyansky,[74] and indicted Alexei Kuzmitchev for money laundering and tax fraud, among others, after he had been taken into custody few days earlier.[75]

While it is yet to be seen how many of the 17 prosecutions will end up with a confiscation order, the French legal system is well established to mount a successful prosecution case against illicit assets frozen by sanctions. Once the French Public Prosecutor is in charge of a specific case, they have access to an array of laws and tools, including its tool of presumption of money laundering, that can be used to attempt to confiscate assets in question.[76]

But the investigative process in France is not without its challenges. While the Circular from the government aimed to increase the activity to track and prosecute sanctioned individuals with unexplained wealth by opening new investigations, there is currently no policy around who to target, and it is unclear how cases are being prioritised.

INFO BOX 2: Government Circular instructing law enforcement agencies to work together to investigate and pursue Russian assets.

A Circular issued by the French Ministry of Justice instructed judicial authorities to prioritise suspicious transactions reports linked to Russian assets, to cooperate with other governmental agencies working on tracing Russian assets of possible illicit origin, and to prosecute money laundering offenses or breaches of these asset freezes where relevant. The Circular gave a green light for French law enforcement authorities to look for evidence and open investigations into potential criminal conduct of sanctioned individuals.

Transparency International France filed legal complaints against persons unknown regarding the potential criminal conduct of five of sanctioned individuals for money laundering, non-justification of resources, stolen goods and complicity in these three offenses following the 2022 Russian sanctions. These legal complaints fed into investigations conducted by French law enforcement authorities and led to the opening of 17 criminal proceedings concerning Russian individuals, which are currently ongoing.

GERMANY

Since 2022, Germany has made considerable changes to both its operational and legislative toolkit to enhance asset tracing, and to facilitate the opening of investigations into illicit assets frozen by sanctions. Although neither this legislation nor policies contain specific instructions or recommendations to investigate illicit wealth in connection with sanctioned assets, law enforcement authorities have tried to pursue at least one case related to sanctioned assets of potentially illicit origin.

Legislative and institutional framework

To remedy the perceived shortcomings in its anti-money laundering architecture and to be able to respond to the increased demands posed by the Russian sanction packages, Germany adopted Sanctions Enforcement Acts I and II, and is in the process of further legislative and institutional improvements. First, in May 2022, the Federal cabinet approved the Sanctions Enforcement Act I (Sanktionsdurchsetzungsgesetz I)[77] aimed at ensuring effective implementation of sanctions in Germany. Concretely, the Act aimed to improve access to existing administrative information for the agencies responsible for enforcing sanctions, and amended and extended their competencies to trace, freeze and investigate sanctioned assets. It also widened the possibilities for requesting clarification over the ownership of assets, requiring designated persons to declare their assets in Germany.[78]

Subsequently, the follow up legislation Sanctions Enforcement Act II (Sanktionsdurchsetzungsgesetz II)[79] was adopted by the German parliament in October 2022, aiming to improve sanctions implementation structures in Germany through a reorganisation and to strengthen anti-money laundering measures more generally. The Sanctions Act II transferred the powers to trace and freeze assets from state governments to the federal government and placed them under the remit of a new Central Office for Sanctions Enforcement (Zentralstelle für Sanktionsdurchsetzung, ZfS). In order to successfully trace sanctioned assets, the ZfS can take various investigative measures, including requesting information from companies and interrogating persons to identify beneficial owners. If these asset tracing investigations indicate the existence of a criminal offence, ZfS is mandated to forward all relevant information to the competent prosecution authority.[80] This should facilitate administrative asset investigations into listed persons and entities and enable nationwide coordination of sanctions enforcement in Germany.[81] The ZfS should be hosted by the new Higher Federal Authority for Combating Financial Crime (Bundesamt zur Bekämpfung von Finanzkriminalität, BBF), which is currently under discussion in parliament.[82]

To support the effective enforcement of sanctions in Germany, an inter-agency task force has been set up, headed jointly by the Federal Ministry for Economic Affairs and Climate Action (BMWK) and the Federal Ministry of Finance (BMF), with the support of various federal government bodies and state representatives.[83] The task force is mainly a coordination body without a specific focus on asset confiscation of sanctioned assets.

In case of a suspicion of a sanction violation, this can be used as evidence of money laundering, and can trigger non-conviction-based confiscation proceedings pursuant to Section 76a (4) German Criminal Code.[84] This section of the criminal code can

also be used to confiscate suspicious unexplained wealth. Neither the Sanctions Enforcement Act, nor any other legislation or policies, include specific link to investigations of illegally acquired wealth in connection with sanctioned assets. The prompt to start investigative proceedings should start in cases when ZfS or any other authority finds indications the sanctioned person might be implicated in criminal behaviour.

Investigations into assets linked to sanctioned individuals

German authorities have made several attempts to investigate possible complex money laundering cases with links to foreign sanctioned PEPs in the past, such as property linked to the Ben Ali family, the former president of Tunisia. These investigations closed without convictions and asset confiscation.[85] In such complex cases of potential financial crime, the federal system has proved to be a stumbling block due to difficulties in bringing together all relevant authorities and in sharing the needed information to effectively track beneficial ownership information and gather relevant evidence.[86] Therefore, the 2022 reforms, including the plans to create a new Federal Financial Criminal Police Office (Bundesfinanzkriminalamt) to combat financial crimes as part of the BBF, are promising developments.[87]

Around EUR 4.48 billion in Russian assets has been frozen in Germany. These estimates also include central bank deposits and corporate shareholdings, however, and it is unclear how much concerns sanctioned individuals.[88] German political figures were vocal about plans to increasingly enforce sanctions against Russia and Germany's readiness to mount criminal prosecutions, for example for false export declarations by companies.[89]

In September 2022 almost 150 cases were under investigation for alleged violations of EU sanctions against Russia and Belarus by the German authorities (including preliminary investigations, trying to collect evidence for enforcement action).[90] Most of these concern the trade sector and it is unclear how many of these exactly concern the evasion of sanctions linked to individual asset freezes.

The only publicly known active legal case related to sanctioned assets of potentially illicit origin in Germany has centred on the Russian-Uzbek businessman Alisher Usmanov. Usmanov caught the attention of authorities for possible tax fraud, money laundering and sanctions violations, with part of these investigations triggered by the Panama Papers leaks of 2016.[91] After Usmanov was designated in 2022, German authorities conducted raids and searches of his properties throughout Germany and have been trying to investigate Usmanov's potentially illicit wealth. Some of these searches were, however, found to be illegal by the courts months later.[92]

German authorities shortly investigated a possible case of sanctions evasion by Alexey Mordashov concerning the sale of his shares in the German travel company TUI to his wife the same day that he was sanctioned by the EU. The transfer of the shares was quickly determined by authorities to be "provisionally invalid" but because it seemed to have taken place exclusively in Cyprus, the German authorities didn't end up opening proceedings.[93]

ITALY

Italy froze assets linked to Russian oligarchs valued at just over EUR 2 billion following the invasion of Ukraine last year. Little information was made available to the public about possible investigations into their possible illicit origin and the total amount was only published following the Russian Escape investigations.[94] Italy has so far not adopted new legislation or operational structures to trace and investigate sanctioned assets and is relying on its existing infrastructure, which has been built to fight organised crime.

Legislative and institutional framework

No specific link between asset freezing sanctions and corruption investigations exists in Italian law. Overarching anti-money laundering legislation is established by Legislative Decree 231/2007.[95] Two further laws apply international sanctions regimes in Italy. Decree 109/2007 on Measures to counter terrorist financing and the activities of countries that threaten peace and international security[96] sets out rules around the freezing of assets in Italy, establishes responsibility and reporting obligations on various public bodies, and establishes a framework for the Financial Security Committee. Legislative Decree 221/2017 (as amended under Legislative Decree 69/2023) lays down the rules for the movement of dual-use goods, trade embargoes and penalties for non-compliance.[97]

The application of these laws is guided by the Financial Security Committee (Comitato di sicurezza finanziaria - Csf) at the Ministry of Economy and Finance. This Committee has additionally taken on the role of overseeing the implementation of sanctions, however its mandate does not include the confiscation of sanctioned assets.[98] Rather, its aim is to support coordination of the actors involved in the implementation of sanctions and to assess the risks of money laundering, illicit assets, and terrorism financing. The Committee includes 15 members, including representatives from Italian law enforcement and intelligence authorities, as well as banks and financial institutions. Data on suspicious transactions is collected through the FIU (UIF - Unità di Informazione Finaziaria) and passed on to investigative and judicial authorities if relevant.[99]

In practice, upon the issuance of a sanctions-related freezing order, Italian authorities conduct an administrative investigation for companies, assets or bank accounts linked to sanctioned individuals and entities. During this investigative process, if any information about potential financial misconduct, such as money laundering, is found, this information should be passed on to prosecutors. For example, if an investigation into the real beneficial owner of a certain property were conducted by the Italian financial police, the Guarda di Finanza, and found that a lawyer did not register the owner of the entity correctly, or a notary did not file a suspicious activity report, this could trigger administrative or penal proceedings in Italy.[100]

It is worth noting that to overcome the challenges of financial investigations into foreign wealth, Italy can utilise its Anti-Mafia law.[101] While this law was originally designed to overcome the difficulties in securing criminal convictions for mafia members and their associates, the law also applies to some sanctioned individuals, who, if approached, would need to justify their wealth, or face confiscation by a judge through simplified administrative proceedings. While the law has been very

successful in targeting mafia members, it has not been tested on foreign PEPs and sanctioned individuals and therefore its full potential is unclear.[102]

The Guardia di Finanza has a wealth of expertise in tracking and seizing the assets of organised criminals. Authorities can benefit from access to a centralised system with considerable powers for tracking and sharing information for fiscal purposes. The Italian fiscal (tax) code also requires a unique identifier made of letters and numbers based on a person's birthday, gender, and name from every proprietor (both Italian or foreign) of any asset, whether a car, property, bank account, or yacht. This enables easy identification and tracking of parties involved in financial transactions. The information gathered for fiscal purposes is also utilised in administrative investigations to track assets of sanctioned persons. Together these are seen as key contributions towards Italy's success in tracking, analysing and investigating individuals and companies.[103]

Investigations into assets linked to sanctioned individuals

Despite the readiness of Italian law enforcement structures and legislative tools to investigate the unexplained wealth of sanctioned individuals, no known anti-corruption investigations linked to sanctioned assets have been started in the country. Following the invasion of Ukraine, Italy froze assets valued at around EUR 2 billion, including bank accounts, luxury villas, yachts and cars. This constitutes around 10% of the total amount seized in Europe.[104] Of this, financial assets account for around EUR 330 million, linked to 80 individuals,[105] while two luxury yachts account together for almost EUR 1 billion euros.[106]

Despite the considerable value of Russian assets frozen in Italy and the successes that the Guardia di Finanza has had,[107] authorities in Italy also face considerable challenges. For example, it took the Italian authorities several months to freeze a villa belonging to Grigory Berezkin on Lake Garda because it is owned a company registered in Luxembourg company which, in turn has been part of a trust.[108] Similarly, it took the Guardia di Finanza around two months to find out that Dmitry Mazepin and his son Nikita own two yachts via a company based in Jersey, which is controlled by another company registered in the British Virgin Islands. By the time ownership was clarified, the yachts were already out of European waters, which secured the owners a charge of sanctions violation and a fine of EUR 500,000 each for Dimitri Mazepin, the company that owns the yacht and for its captain.[109]

INFO BOX 3: The Russian Escape investigations.[110]

Between autumn 2022 and June 2023 CiFAR and partners from the European Investigative Collaborations[111] coordinated investigations into how far sanctions applied against Russian individuals following the invasion of Ukraine were being effectively implemented in Europe. The investigations in Italy identified for the first time the amount of frozen assets in Italy to be just over 2 billion euro – or 10% of the EU total frozen assets. These assets that relate to 24 Russian citizens and four companies. A close look at some of these frozen assets showed that it is likely that sanctions are being evaded in several cases through the transferring of assets to family members or through the continued profit generation via renting.

SPAIN

Spain has not been at the forefront of attempts at a stronger sanctions implementation in Europe, nor has it called for the confiscation of potential illicit wealth frozen by sanctions. Despite the considerable amount and value of assets belonging to Russian individuals frozen in the country, the only known investigative proceedings relating to potential sanctions evasions by Russian individuals was conducted at the request of the United States.

Legislative and institutional framework

In the past two years, Spain has made only minor amendments to its legislative framework relevant to asset confiscation[112] and has not introduced further laws or policies aimed at facilitating the implementation of sanctions. The cornerstone of the Spanish system to implement sanctions is its anti-money laundering regime, which has been evaluated as robust according to FATF standards. When it comes to sanctions implementation, shortcomings persist in the delayed transposition of designated entities into national sanctions lists, a lack of clear channels or procedures for directly receiving foreign requests to take freezing actions, and a lack of active propositions for sanctions designations.[113]

A legal tool that is vital in Spain's main role in fighting financial crimes, money laundering, and illicit assets is the 10/2010 Law on the Prevention of Money Laundering and Terrorist Financing, which enables the application of sanctions.[114] Spain's Criminal Code Article 301[115] and Act 19/2003[116] then define and regulate money laundering and the control of illicit assets respectively.

In practice, the Servicio Ejecutivo de la Comisión de Prevención de Blanqueo de Capitales (Sepblac) or Executive Service of the Commission for the Prevention of Money Laundering and Financial Crimes, serves as the FIU that supervises and inspects compliance with money laundering and financial sanctions.[117] Sepblac reports to the Commission for the Prevention of Money Laundering and Monetary Offences, formed of representatives from 24 state institutions and law enforcement agencies.[118]

Notaries, who are required to perform customer diligence checks and flag potential suspicious transactions, also play an important role in the fight against financial crime in Spain.[119] These reports should then be analysed and further communicated via the Centralized Organization for the Prevention of Money Laundering (OCP) - a notary body that channels its finding to public authorities, the judiciary and the police. They are responsible tracing properties of sanctioned individuals and communicating their findings to the government.[120]

Investigations into assets linked to sanctioned individuals

Beyond the routine checks of notaries, financial institutions, and the FIU's analytical reports, there is no specific guidance or policy that calls for investigations into suspicious sanctioned assets in Spain. Similarly to other jurisdictions, this might be among the reasons why no judicial proceedings linked to sanctioned assets are known to be taking place currently.

The tracing and freezing of certain assets also constitutes a challenge in Spain. Through the Russian Escape investigations, Spanish investigative journalists found

several assets that had not been frozen. Some of these properties were officially owned by family members of the sanctioned individuals and others were under layers of companies obfuscating the real beneficial owner.[121] Overall, more than EUR 1 billion in assets have been frozen in Spain, including real estate, airplanes and bank accounts, with yachts being among the most valuable.[122]

Past enforcement action in the country seemed to have focused on import and export trade sanctions, for which criminal penalties apply.[123] The Ministry of Economic Affairs and Digital Transformation keeps a list of fines imposed in relation to failed money laundering and sanctions compliance.[124] The only known set of enforcement actions revolved around the luxury yacht Tango belonging to the sanctioned Viktor Vekselberg at the request of the United States. First, in April 2022, the Spanish Guardia Civil seized the yacht following the issuance of a U.S. seizure warrant based on the allegations of bank fraud, money laundering, and sanction evasion. Then, in January 2023, the Spanish authorities acted on the U.S request and provisionally arrested one of two businessmen who have been charged with facilitating a sanctions evasion and money laundering scheme in relation to the ownership and operation of the yacht.[125]

SWITZERLAND

Switzerland's Foreign Illicit Assets Act (FIAA) legislation, which creates the basis for asset freezes under certain conditions, is a unique example in that it actively encourages law enforcement to investigate assets frozen under its regime. Despite the adoption of this progressive legislation and the recent dedication of more resources to implement and enforce sanctions, when implementing sanctions coordinated with other countries and the UN, Switzerland lacks policies encouraging law enforcement authorities to investigate the origins of sanctioned assets and whether they can be confiscated in Switzerland due to criminality.

Legislative and institutional framework

The Swiss legislative framework allows Switzerland to implement autonomous sanctions regimes, when they have already been adopted by its partners, as well as freezing orders on the request of the government (the Federal Council). The imposition of orders to freeze individual assets located in Switzerland is enabled by the Foreign Illicit Assets Act (FIAA)[126] and is a rare example of legislation that creates a basis for confiscation and restitution of frozen assets to the countries of origin, creating a direct link between these processes. As described in Section 4 of the FIAA, the confiscation of frozen assets can proceed as part of a procedure initiated in the country of origin via an MLA request or according to an independent Swiss criminal procedure. Section 4 also creates a presumption that frozen assets are of illicit origin where the wealth of the sanctioned PEP "increased inordinately", or where the level of corruption surrounding the foreign PEP was notoriously high during their term of office.

However, the FIAA can only be applied in situations of political crises and failed regimes. Switzerland used the FIAA to freeze the assets of ousted ruling elites from Egypt and Tunisia in 2011, and Ukraine in 2014.[127] While there was an attempted coordination between these countries and Switzerland to investigate sanctioned individuals and return some of the frozen assets, only a very small proportion of these funds was eventually returned.

Otherwise, sanctions are imposed by Switzerland in parallel to sanctions adopted by the United Nations (UN), Organisation for Security and Cooperation in Europe (OSCE) or by Switzerland's most significant trading partners, which so far have only been the EU. The imposition of sanctions is governed by the Federal Act on the Implementation of International Sanctions (the Embargo Act).[128] This law sets out the types of sanctions that can be imposed, the roles and powers of the supervisory authorities, including on cross-border cooperation, and the extent of criminal and monetary penalties levied in cases of non-compliance and sanction violations.

Unlike the FIAA, the Embargo Act does not contain provisions that would encourage authorities to start proceedings regarding the assets frozen by sanctions. However, Article 13 of the Embargo Act, which states that any "property and assets that are subject to compulsory measures shall be forfeited irrespective of the criminal liability of any particular person in the event that their continued lawful use is not guaranteed",[129] was scrutinised during the country's "freeze to seize" debate over Russian assets. Similarly to most other jurisdictions so far, the discussion over the use of radical innovative tools to confiscate the assets of sanctioned Russian oligarchs

in Switzerland without proving them to be of illegal origin, such as the Canadian C-19 Budget Implementation Act, was concluded to be a violation of the rule of law and the right to property.[130]

Some of the key institutions involved in the implementation of and potential investigations into breaches of asset-freezing sanctions are the Money Laundering Reporting Office Switzerland (MROS) – the Swiss FIU -, the Swiss Financial Market Supervisory Authority (FINMA) and the State Secretariat for Economic Affairs (SECO).[131] Both MROS and SECO are able to refer suspicious cases on for further investigations to the Attorney General, however, a specific mechanism that would flag suspicious cases of unexplained wealth in the cases of sanctioned assets appears to be missing.

Called for by civil society,[132] the Swiss Council rejected a proposal to set up its own task force to locate, freeze and if necessary, confiscate the assets of sanctioned Russian and Belarusian nationals located in the country. It argued with sufficient activities of existing agencies, including the existing Sanctions Policy Coordination Group, whose focus is on sanctions policy and implementation.[133]

Investigations into assets linked to sanctioned individuals

With regards to scrutinising sanctioned assets and starting criminal or civil investigations in case of any suspicions over their legality, there are no signs of a concentrated effort by the Swiss government in this direction. There do not seem to be any investigations linked to sanctioned Russian assets launched by law enforcement, with the only related case being of bank employees convicted of violating Swiss anti-money-laundering laws.[134] This might come as a surprise given the amount of Russian assets located in the country, either directly in bank accounts and properties or indirectly via businesses registered in Switzerland.[135] While Swiss authorities have frozen around CHF 7.5 billion (EU7.7 billion) in assets linked to sanctioned individuals, the Swiss Bankers Association has estimated that there is around CHF 150 billion (EUR 155 billion) in Russian assets in Switzerland overall.[136]

Switzerland is the only country analysed in this report that has not joined the REPO task force far. The country's failure to join the international REPO Task Force and the lack of proactive approach to investigating sanctioned assets has resulted in critique from the US and other G7 countries towards Switzerland. A letter from April 2023 issued by G7 countries directed to the Swiss Federal Council highlighted concerns that the "Swiss privacy provisions…could be used to cover the tracks of financial shelters" and "that law enforcement officials are blocked from investigating illicit financial structures… because of privacy protections"[137] This critique, led by the US over insufficient sanctions enforcement and measures against money laundering, was addressed directly to the Swiss government and the Swiss banking sector. The US Department of Justice has launched a probe into compliance failures that might have led to sanctions violations by a Swiss bank Credit Suisse, which was known to cater to wealthy Russian clients.[138]

The authority responsible for the implementation of sanctions in Switzerland, the State Secretariat for Economic Affairs (SECO), has responded to the criticism by highlighting an increase in staff resources dedicated to overseeing the implementation of sanctions[139] and the successful closure of around half of 29 initiated criminal proceedings for attempted Russian sanctions violations.[140] In one case SECO passed a potential case to the Attorney General for investigation, who,

however, upon inspection did not consider it relevant and closed it.[141] SECO and other relevant authorities fighting financial crime are, however, still considered to be considerably under-resourced, with most recent investigations largely focusing on small luxury goods traders rather than the enabling networks around sanctioned individuals.[142]

Civil society has further called for the removal of administrative obstacles to investigations into sanctions violations, by removing the need for SECO to specifically request law enforcement authorities to act, as is currently the case under the Embargo Act. Moreover, additional voices from the private sector and political representatives have joined forces in urging the Swiss parliament to reconsider its position and join the REPO task force.[143] New legislation that should establish a beneficial ownership registry and put financial advisors under money laundering legislation in compliance with the FATF regulations should be debated in parliament towards the end of 2023.[144]

INFO BOX 4: The Swiss Foreign Illicit Assets Act

Legislation enabling authorities to freeze assets of politically exposed persons located in Switzerland in situations of political crises and failed regimes creates a direct link between these assets and anti-corruption investigations. The Swiss Foreign Illicit Assets Act (FIAA) offers a basis not only for freezing, but also for the confiscation and restitution of frozen assets to the countries of origin, where the original crime occurred. The confiscation of frozen assets can proceed as part of a procedure initiated in the country of origin via an MLA request or following independent Swiss criminal proceedings.

UNITED KINGDOM

Before leaving the EU, the UK had been one of the most active EU Member States in proposing and enforcing sanctions designations. In recent years, the UK has adopted new legislation, increased resources for authorities enforcing sanctions, established a new authority to combat kleptocracy, and has specifically targeted the assets of sanctioned corrupt elites. However, little information about the outcomes of UK's heightened efforts have been made public so far and the extent to which the origins of sanctioned assets are investigated for potential criminality is unclear.

Legislative and institutional framework

Over the past two years, the UK has adopted a series of new laws and policies in order to strengthen its sanctions regime and to help overcome challenges that the UK has faced in the past when attempting to confiscate the proceeds of financial crime originating in foreign jurisdictions. Amongst the changes brought forward include the Economic Crime (Transparency and Enforcement) Bill 2022, establishing a new Register of Overseas Entities, which requires the identification of owners behind foreign companies which own UK property. It also includes reforms to Unexplained Wealth Orders (UWOs). These new laws however do not specifically call on or encourage law enforcement authorities to investigate the origins of sanctioned assets.[145]

At the same time, the government established a new entity aimed at targeting "sanctions evasion and corrupt Russian assets hidden in the UK."[146] The Combatting Kleptocracy Cell, housed within the National Crime Agency, is a multi-disciplinary body combining the intelligence and operational expertise of both law enforcement and government. While it was launched in reaction to Russia's invasion of Ukraine, its focus going forward should be on corrupt elites and their enablers in general.[147]

Further strengthening of institutions fighting financial crime was announced a year later, in March 2023, which included new methods of engagement with the private sector, the general public and law enforcement agencies themselves, and the hiring of 475 new financial crime investigators "spread across intelligence, enforcement and asset recovery at key agencies."[148] The UK also expanded the Combatting Kleptocracy Cell, increased the NCA's budget and announced the investment of GBP 100 million (approx. EUR 120 million) in new technology and data analytics software to support the efforts of law enforcement.

Financial sanctions are implemented and enforced in the UK by the Office of Financial Sanctions Implementation (OFSI)[149] who can impose civil penalties of up to GBP 1 million (approx. EUR 1.2 million) or 50% of the value of the funds linked to the offence, whichever is greater. The most serious evasion cases can be referred by OFSI to the National Criminal Agency (NCA) for criminal investigation, which can then refer cases to the Crown Prosecution Service for prosecution. The primary legislation governing OFSI's operations is the Sanctions and Anti-Money Laundering Act 2018 (SAMLA).[150]

The NCA has powers and a range of tools available via the Proceeds of Crime Act 2002 (POCA) to pursue the permanent confiscation of criminal assets through criminal and civil recovery proceedings. In line with the experience of other jurisdictions, civil recovery is likely the

preferred and more feasible way to recover assets of foreign corrupt officials. Nevertheless, even though UK authorities can use a range of tools to facilitate confiscation, including UWOs, challenges in their application have heightened interest in further legislative improvements.[151]

Investigations into assets linked to sanctioned individuals

In 2023, the UK reported that it had frozen more than GBP 18 billion (approx.. EUR 20 billion) in Russian private assets,[152] one billion less than that frozen in all EU Member States together. While the Combating Kleptocracy Cell is mandated to targeting the assets of corrupt elites and their networks in general, the action of the Cell so far has focused on sanctions compliance. Following suspicions of evasion linked to sanctioned properties, the Cell has raided several houses of sanctioned individuals, gathered additional evidence, and secured further assets belonging to them.[153]

The NCA's Cell is reported to have secured nearly 100 disruptions, meaning "actions that demonstrably remove or reduce a criminal threat – against Putin-linked elites and their enablers".[154] Examples of disruptions include Account Freezing Orders (AFOs), investigations and "discreet action", as well as targeting pathways to hide possible unexplained or undeclared wealth. Based on the available information about the nature of these disruptions, it has been estimated that they include around 10 account freezing orders.[155]

It Is unclear how many cases of criminal charges for evasion of financial sanctions have been initiated by the NCA, as it has declined to openly publish this information.[156] Media accounts described and followed the investigations of Petr Aven and Mikhail Fridman, which have been partially rolled back against Aven and completely dropped against Fridman.[157] Beyond these sanctions evasion cases, there has been no information about any current prosecution case or confiscation proceedings linked to sanctioned individual's illegal wealth in general.

While the UK has been the leader when it comes to pursuing financial crime and enforcing sanctions in Europe, these efforts still cannot compare to the magnitude of the challenge in the country, given the size of its financial system. While the UK opened the newly resourced and staffed Kleptocracy Cell, announced new investments, and expanded OFSI staff numbers from 40 to more than 140, the amount of routine work that might keep the regulators away from focusing on the big cases increased dramatically. For example, the number of licence applications related to Russian sanctions that OFSI received before the war was 11, while in the following year it increased to 1,000 requests.[158]

UNITED STATES

The United States has traditionally been a leading jurisdiction in imposing sanctions, as well as in monitoring and enforcing their compliance. This has at times included the launch of civil and criminal proceedings. Since the Russian invasion of Ukraine, the country has boosted the operational capacity of its law enforcement agencies, enabling them to use existing tools more efficiently, and strengthened cooperation with other jurisdictions around coordination of enforcement actions.

Legislative and institutional framework

Since the beginning of 2022, the United States came up with various new initiatives that aim to strengthen its capacity to effectively implement and enforcement sanctions nationally and among its partner countries.

Shortly after the invasion of Ukraine, the US Department of Justice announced the creation of the interagency Task Force KleptoCapture to help enforce the new myriad of sanctions and export controls it imposed on Russian individuals and companies. The Task Force's mission is broad, with a focus on both tackling sanctions evasion and "using civil and criminal asset forfeiture authorities to seize assets belonging to sanctioned individuals or assets identified as the proceeds of unlawful conduct".[159]

The offences that the Task Force can investigate and prosecute must broadly be related to its mission, which includes conspiracy to defraud the United States; money laundering; false statements to a financial institution; bank fraud; and tax offenses. The maximum criminal penalty under these offences individually is 20 years in prison and/or up to USD 1 million (approx. EUR970,000) per violation.[160]

Around the same time as the Task Force KleptoCapture was established, the Russian Elites, Proxies, and Oligarchs (REPO) multilateral task force also came in to being. It was created as a channel for information sharing and international cooperation regarding sanctions, asset freezing, civil and criminal asset seizure, and criminal prosecution.[161] The US also expanded its internal capacity to investigate and prosecute sanctions evasions, export controls violations, and other economic crimes by hiring 25 new prosecutors.[162] Furthermore, interagency enforcement cooperation was strengthened between the US Department of Commerce's Bureau of Industry and Security (BIS), the US Department of Justice (DOJ) and the US Treasury Department's Office of Foreign Assets Control (OFAC).[163]

Traditionally, the key regulator in enforcing sanctions regulations has been the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC). OFAC administers and enforces U.S. economic and trade sanctions programs, including the publication of compliance guidelines for companies.[164] OFAC's enforcement proceedings are of a civil nature. In cases where it is believed that enforcement proceedings will require criminal penalties, OFAC can refer a case to the US Department of Justice (DOJ), although the DOJ may at times pursue cases at its own initiative.[165] Both OFAC and the DOJ have a rich track record of enforcement actions, including the use of civil and criminal asset forfeiture statutes.[166]

Investigations into assets linked to sanctioned individuals

The DOJ has launched a number of investigations into alleged violations of US sanctions by Russian individuals. For example, PEPs Konstantin Malofeyev, Andrei Derkach, and Oleg Deripaska, Alexander Babakov face charges for sanctions evasion and other related crimes. Several individuals from other countries, including US citizens have been charged with facilitating their attempt at sanctions evasion. The seizure and forfeiture of assets linked to Russia sanctions, including yachts, have been coordinated by the DOJ's Task Force KleptoCapture, with assets amounting to more than USD 500 million seized, forfeited, or restrained over first year of the sanctions.[167]

In most of these cases, US strategy has been to first obtain a seizure warrant based on a probable cause to believe that an asset of a sanctioned Russian individual or entity is subject to forfeiture because of its connection to a criminal offence. At times, US authorities have sought the assistance of courts in jurisdictions where the asset was located to serve the warrant and take custody of the asset, such as in the case of the yachts Tango or Amadea. The ultimate step to pursue and confiscate the asset is then to file a civil (non-conviction-based) forfeiture action related to the particular asset.[168]

While US authorities indicted over 30 individuals for the evasion of sanctions and other related crimes in 2022[169] and have seized a number of properties belonging to sanctioned Russian individuals, they have moved forward with civil forfeiture only in couple of cases so far. Even for the well-equipped US authorities, it is predicted that these cases might take years to resolve at trial or settle and it remains to be seen to which level of success.[170] US authorities may therefore be cautious when starting any action until they are certain that the evidence that they have gathered will be able to withstand judicial scrutiny.

A successful case of forfeiture of funds and their subsequent transfer to Ukraine to aid in its recovery concerned USD 5.4 million belonging to a businessman Konstantin Malofeyev. The DOJ charged Malofeyev with violating Russian sanctions, which were imposed on him after the invasion of Ukraine, claiming he was helping to finance the aggression.[171]

Beyond the heightened capacity and cooperation efforts of US authorities, another tool that might be aiding the US efforts to gather information relevant for prosecuting cases of illicit wealth, including those of sanctioned individuals, is its whistle-blower incentives programme. The United States operates a Kleptocracy Asset Recovery Rewards Program which offers monetary rewards to people who provide information to the US authorities which would lead to "the restraint or seizure, forfeiture, or repatriation of stolen assets, [...] linked to foreign government corruption".[172] The Program also envisages the return of such assets to the country harmed by the acts of corruption where appropriate and feasible. While the authorities accept information regarding corruption cases linked to any foreign governments, they specifically advertise for cases of interest: for example cases related to Russian government, the Malaysia Sovereign Wealth Fund (so-called 1MDB case) and Odebrecht bribery case spanning number of countries in Latin America.

INFO BOX 5: Interagency task forces helping to seize assets belonging to sanctioned individuals

In response to the Russian invasion of Ukraine, several countries established interagency task forces dedicated to seizing assets belonging to sanctioned individuals. Some of these task forces, comprising experts from law enforcement, financial intelligence units, and regulatory bodies, were created to ensure not only a coordinated and efficient approach to identifying and freezing assets linked to individuals and entities facing sanctions but also their seizure and confiscation. The US Task Force KleptoCapture and the UK Combating Kleptocracy Cell are examples of task forces with a mandate extending to pursuing sanctioned assets.

CROSS-BORDER INITIATIVES TO INVESTIGATE SANCTIONED ASSETS

In addition to national action, as cases of grand corruption and other crimes usually span across multiple jurisdictions, international cooperation has also been key to collecting evidence and mounting legal proceedings. A facet of this has been the establishment of new cross-border initiatives and task forces in the past two years that have operated typical processes in order to coordinate action around sanctions.

From the start of the Russian war in Ukraine in March 2022, major sanctioning jurisdictions strove to collaborate on the imposition, tracing and investigation of assets linked to sanctions. The G7 countries (formed of the European Union, together with the US, Canada, France, Germany, Japan Italy, and the UK), together with Australia joined forces to identify and seize assets after Russia's invasion of Ukraine. One of the key vessels for collaboration has been the transatlantic Russian Elites, Proxies, and Oligarchs (REPO) Task Force which aims "to take all available legal steps to find, restrain, freeze, seize, and, where appropriate, confiscate or forfeit the assets of those individuals and entities that have been sanctioned".[173]

Similarly, the EU set up a Freeze and Seize Task Force shortly after the Russian invasion to ensure the efficient implementation of sanctions across EU Member States. It aims to coordinate actions to effectively locate, freeze, seize and, "where the national law calls for it, confiscate assets of the listed Russian and Belarussian oligarchs."[174] The Task Force is comprised of the European Commission, representatives from each Member State, Eurojust and Europol, as well as other EU agencies. The EU Commissioner for Justice, Didier Reynders has highlighted the focus on investigating sanctioned assets:

> *This coordination will make the prosecution of the listed Russian and Belarussian oligarchs in the Union a concrete possibility. Such initiatives are vital to achieve the rapid freezing and confiscation of the assets owned by individuals and entities targeted by the sanctions.*[175]

Moreover, an EU-wide operation was launched in order to support the freezing and investigation of assets owned by individuals sanctioned in the EU under the name Operation Oscar in April 2022. EU Member States, Europol, Eurojust and The European Border and Coast Guard Agency (Frontex) joined forces in this special operation.[176] By facilitating the exchange of intelligence and operational support between these agencies, the cooperation aims to enhance financial investigations into criminal sanctioned assets, as well as into potential circumvention of EU sanctions related to the military aggression.

CONCLUSIONS

CONCLUSIONS

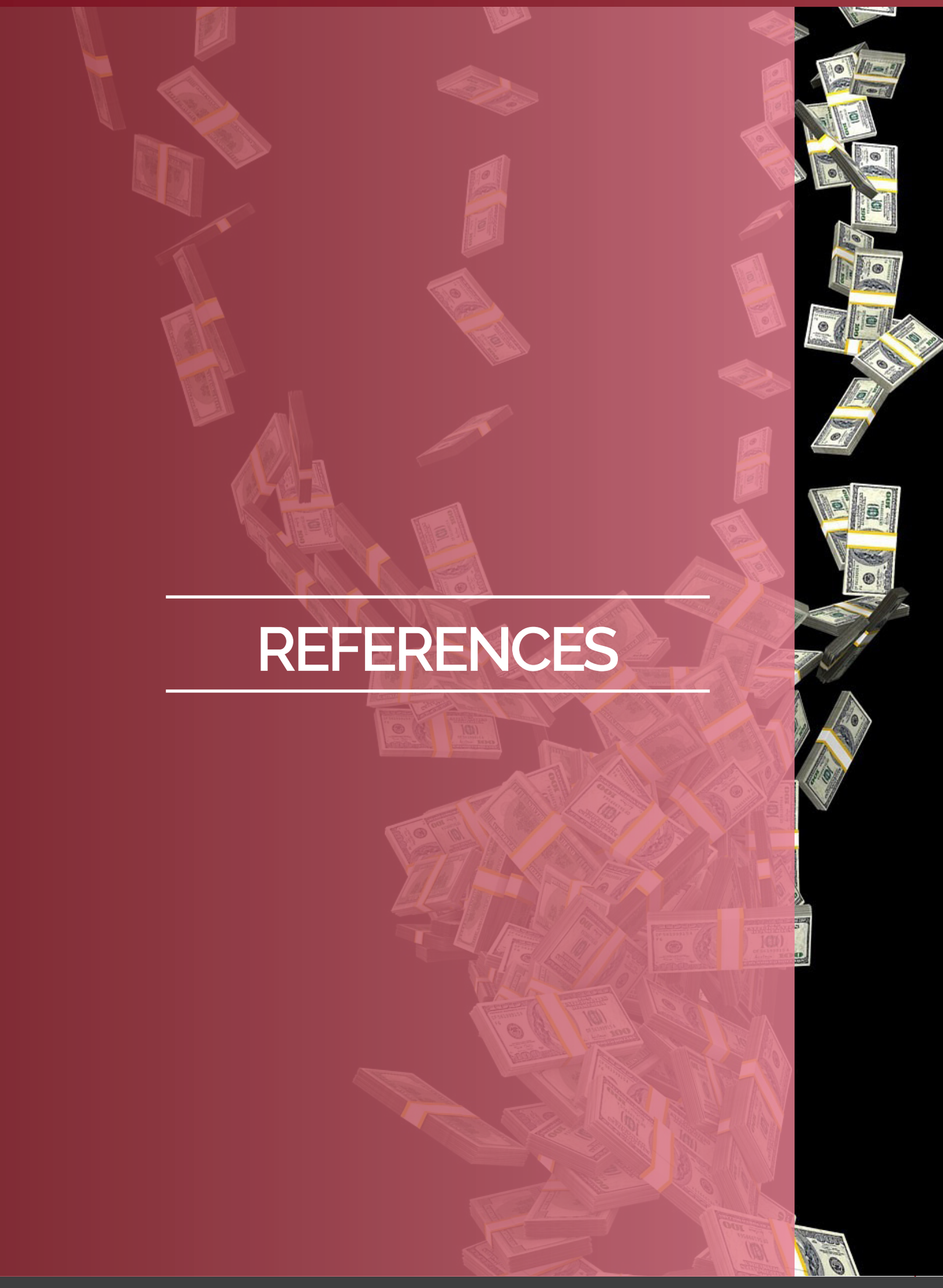
Law enforcement authorities in all studied jurisdictions have the capabilities and legal pathways available to pursue sanctioned assets if the evidence shows that they might have been acquired via illicit means or are the result of illicit activities. However, the imposition of temporary asset freezing sanctions and investigations into illicit wealth are measures that, until recently, have not been connected in legislation, policy or practice. Consequently, corruption investigations into sanctioned assets have happened in only a handful of cases.

Out of the eight jurisdictions reviewed here, little exists that would require or encourage law enforcement to open investigations after the imposition of sanctions. Guidance issued by the government of France and task forces set up in the UK and the US with a mandate to pursue unexplained wealth of foreign sanctioned politically exposed persons are examples of how governments can make clear that the origins of assets frozen by sanctions should be scrutinised. While the Swiss FIAA constitutes a unique example of a legislative link between asset freezing orders and investigations, it can be applied only in the very specific case of failed regimes.

Aside from a clear policy around the opening of investigations into sanctioned assets, anti-corruption and financial investigations of a transnational nature often require the cooperation of multiple agencies, such as financial regulators, tax authorities, and law enforcement agencies. The creation of inter-agency task forces to oversee the effective implementation and the investigation of sanctioned assets is therefore a welcome step to pool together specialised skills and expertise needed to conduct investigations effectively. To enhance the gathering and exchanging of evidence needed for legal cases, authorities could also more actively cooperate with non-state actors and consider schemes offering protection and financial incentives to whistleblowers.

Overall, what this study has showed is that, despite an increase in rhetoric around sanctions being seen as a step towards confiscation and asset recovery since the imposition of Russian sanctions, key sanctioning jurisdictions are often failing to implement the measures needed to make this happen. As has been seen in previous sanctions regimes, a reliance on sanctions alone without the opening of investigations into the origins of those funds in sanctioning jurisdictions, will likely result in the returning of those funds to sanctioned persons and entities.

Making a stronger link between sanctions and anti-corruption investigations won't solve this issue on its own. But making a clear commitment to investigate the origins of sanctioned assets would bring idea of freeze to seize closer and move the needle further on preventing corrupt persons continuing to enjoy wealth stolen from others.



REFERENCES

REFERENCES

1 Definitions taken from: Brun, Jean-Pierre, Larissa Gray, Clive Scott, and Kevin Stephenson. Asset Recovery Handbook: A Guide for Practitioners. The World Bank, 2011. https://doi.org/10.1596/978-0-8213-8634-7; FATF. "International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation." 2012-2023. Paris, France. www.fatf-gafi.org/en/publications/Fatfrecommendations/Fatf-recommendations.html.

2 For example, the international REPO Task Force was established shortly after the invasion as a platform for G7 countries to coordinate their efforts to freeze, seize and confiscate assets and launch criminal prosecution. See U.S. Departments of Justice. "U.S. Departments of Justice and Treasury Launch Multilateral Russian Oligarch Task Force," March 16, 2022. https://www.justice.gov/opa/pr/us-departments-justice-and-treasury-launch-multilateral-russian-oligarch-task-force

3 Keatinge, Tom and Nizzero, Maria. "From Freeze to Seize: Creativity and Nuance Is Needed," November 17, 2023. https://rusi.org/explore-our-research/publications/commentary/freeze-seize-creativity-and-nuance-needed; Dornbierer, Andrew. "Working Paper 42: From Sanctions to Confiscation While Upholding the Rule of Law." Basel Institute on Governance Working Papers, February 1, 2022, 41. https://doi.org/10.12685/bigwp.2023.42.41

4 Portela, Clara. "Sanctioning Kleptocrats. An Assessment of EU Misappropriation Sanctions." CiFAR, 2019. https://cifar.eu/wp-content/uploads/2019/03/CiFAR_Sanctioning-kleptocrats.pdf

5 ibid.

6 Dornbierer, Andrew. "Working Paper 42: From Sanctions to Confiscation While Upholding the Rule of Law." Basel Institute on Governance Working Papers, February 1, 2022, 41. https://doi.org/10.12685/bigwp.2023.42.41

7 The possible confiscation of state assets brings with it whole other set of challenges and is therefore out of the scope of this paper.

8 For example, EU sanctions legislation uses the term "freezing of economic resources" which "means preventing the use of economic resources to obtain funds, goods or services in any way, including, but not limited to, by selling, hiring or mortgaging them;" and "freezing of funds" of various kinds, which means "preventing any move, transfer, alteration, use of, access to, or dealing with funds in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination or any other change that would enable the funds to be used, including portfolio management." Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014R0269

9 Office of Financial Sanctions Implementation. UK Financial Sanctions. General guidance for financial sanctions under the Sanctions and Anti-Money Laundering Act 2018. 2022. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/961516/General_Guidance_-_UK_Financial_Sanctions.pdf

10 Gordon, Joy. "Smart Sanctions Revisited," Ethics and International Affairs, Vol. 25, No. 3, Fall 2011, p.315-335.

11 Portela, Clara. "Horizontal sanctions regimes: targeted sanctions reconfigured?" 2021. In C. Beaucillon (Ed.), Research Handbook on Unilateral and Extraterritorial Sanctions. Edward Elgar

12 Moiseienko, Anton. "Crime and Sanctions: Beyond Sanctions as a Foreign Policy Tool". German Law Journal (Forthcoming), 2023. Available at SSRN: https://ssrn.com/abstract=4478056

13 In the case of Russia, it is widely perceived that the key goals that sanctions are trying to achieve are regime change, change of Russian policy, disrupting the military capacity, and expressing strong disapproval with the invasion. Agazzi, Isolda. "Russia: Sanctions under Scrutiny." AllianceSud (blog), June 21, 2022. https://www.alliancesud.ch/en/russia-sanctions-under-scrutiny

14 While most jurisdictions can use Magnitsky legislation to target perpetrators of both human rights abuses and/or corruption, others are aimed only on one of these predicate offences, such as the EU's focus on human rights violations. See: REDRESS. Multilateral Magnitsky Sanctions at Five Years. 2022. https://redress.org/wp-content/uploads/2022/11/Multilateral-Magnitsky-Sanctions-at-Five-Years_November-2022.pdf

15 Moiseienko, Anton. "Crime and Sanctions: Beyond Sanctions as a Foreign Policy Tool." German Law Journal (Forthcoming), 2023. Available at SSRN: https://ssrn.com/abstract=4478056

16 LexisNexis. n.d. 'What Are Sanctions? - Glossary'. Accessed 7 April 2022. https://internationalsales.lexisnexis.com/glossary/compliance/sanctions

17 Oldfield, Jackson. "The Challenges of Asset Freezing Sanctions as an Anti-Corruption Tool." Transparency International Anti-Corruption Helpdesk Answer. Transparency International, 2022. https://knowledgehub.transparency.org/assets/uploads/kproducts/Sanctions-Asset-Freezes-Anticorruption_2022_final.pdf

18 Clara Portela. "Sanctioning Kleptocrats. An Assessment of EU Misappropriation Sanctions." CiFAR, 2019. https://cifar.eu/wp-content/uploads/2019/03/CiFAR_Sanctioning-kleptocrats.pdf

19 Ashton, Catherine. Speech by European Union High Representative on the EU's policy on restrictive measures, European Parliament, Brussels, 1 February 2012. http://europa.eu/rapid/press-release_SPEECH-12-64_en.html

20 ibid.

21 Portela, Clara. "Sanctioning Kleptocrats. An Assessment of EU Misappropriation Sanctions." CiFAR, 2019. https://cifar.eu/wp-content/uploads/2019/03/CiFAR_Sanctioning-kleptocrats.pdf

22 Keatinge, Tom and Nizzero, Maria. "From Freeze to Seize: Creativity and Nuance Is Needed," November 17, 2023. https://rusi.org/explore-our-research/publications/commentary/freeze-seize-creativity-and-nuance-needed

23 Nizzero, Maria. "Oligarchs' Cash Could Help Rebuild Ukraine – but Don't Let Them Buy Their Way out of Sanctions." The Guardian, June 22, 2023, sec. Opinion. https://www.theguardian.com/commentisfree/2023/jun/22/oligarchs-ukraine-russia-sanctions-recovery-conference-frozen-assets

24 France, Guilherme. "Non-Conviction-Based Confiscation as an Alternative Tool to Asset Recovery." Transparency International Anti-Corruption Helpdesk Answer. Transparency International, 2022. https://knowledgehub.transparency.org/as-

sets/uploads/helpdesk/Non-Conviction-Based-Forfeiture_2022.pdf; Dornbierer, Andrew. "Working Paper 42: From Sanctions to Confiscation While Upholding the Rule of Law." Basel Institute on Governance Working Papers, February 1, 2022, 41. https://doi.org/10.12685/bigwp.2023.42.41

25 Dornbierer, Andrew. "Working Paper 42: From Sanctions to Confiscation While Upholding the Rule of Law." Basel Institute on Governance Working Papers, February 1, 2022, 41. https://doi.org/10.12685/bigwp.2023.42.41

26 The European Union is seeking to standardise the approach to sanctions evasion by making it a criminal offence across all Member States. In the event of a potential violation, new rules would define levels of criminal sanctions, as well as minimum and maximum financial penalties for violations. See: Proposal for a Council Decision on extending the list of EU crimes to include the violation of Union restrictive measures, European Commission, 25 May 2022. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2022%3A0247%3AFIN

27 Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014R0269

28 Dornbierer, Andrew. "Working Paper 42: From Sanctions to Confiscation While Upholding the Rule of Law." Basel Institute on Governance Working Papers, February 1, 2022, 41. https://doi.org/10.12685/bigwp.2023.42.41

29 Cizmaziova, Lucia. "Sanctions as a Tool for Asset Recovery: Global Report". CiFAR, 2021. https://cifar.eu/wp-content/uploads/2021/05/CiFAR_Sanctions-as-a-Tool-for-Asset-Recovery_Global-Perspective.pdf

30 Cizmaziova, Lucia. "Unexplained Wealth Orders: A New Tool for Asset Recovery?" CiFAR, 2022. https://cifar.eu/wp-content/uploads/2022/11/Unexplained-Wealth-Orders-Updated.pdf ; Mayne, Tom, and John Heathershaw. 'Criminality Notwithstanding. The Use of Unexplained Wealth Orders In Anti-Corruption Cases.' Power Brief l Central Asia. Anit-Corruption Evidence Research Programme, 2022. https://ace.globalintegrity. org/wp-content/uploads/2022/03/CriminalityNotwithstanding.pdf.

31 Nizerro, Maria. "From Freeze to Seize: Dealing with Oligarchs' Assets in the UK." RUSI, November 17, 2023. https://rusi.orghttps://rusi.org

32 U.S. Department of State. "Joint U.S., U.K. and Canadian Sanctions Against Former Lebanese Official and Co-Conspirators in Corruption Scheme," August 10, 2023. https://www.state.gov/joint-u-s-uk-and-canadian-sanctions-against-former-lebanese-official-and-co-conspirators-in-corruption-scheme/

33 While Swiss asset freezing orders under its Foreign Illicit Assets Act are technically not sanctions, together with the EU's misappropriation sanctions, and Canadian sanctions under the Freezing Assets of Corrupt Foreign Officials Act, the allegations of state capture in Egypt, Tunisia and Ukraine were the central reasons behind the design of these regimes. The US was first to adopt a horizontal anti-corruption sanctions regime under the Global Magnitsky Human Rights Accountability Act, followed by the Canadian Justice for Victims of Corrupt Foreign Officials Act and UK's Global Anti-Corruption Sanctions Regulations. See Sanctions Watch platform at: https://sanctionswatch.cifar.eu/sanctions-regimes

34 UK Government, 2021. The Global Anti-Corruption Sanctions Regulations 2021 https://www.legislation.gov.uk/uksi/2021/488/regulation/6/made

35 Moiseienko, Anton. "Crime and Sanctions: Beyond Sanctions as a Foreign Policy Tool". German Law Journal (Forthcoming), 2023. Available at SSRN: https://ssrn.com/abstract=4478056

36 U.S. Department of the Treasury. "Treasury Targets Corruption and the Kremlin's Malign Influence Operations in Moldova," October 26, 2022. https://home.treasury.gov/news/press-releases/jy1049

37 "UK Sanctions Target 30 Corrupt Political Figures, Human Rights Violators and Perpetrators of Conflict-Related Sexual Violence around the World," GOV.UK. December 9, 2022. https://www.gov.uk/government/news/uk-sanctions-target-30-corrupt-political-figures-human-rights-violators-and-perpetrators-of-conflict-related-sexual-violence-around-the-world.

38 https://www.canada.ca/en/global-affairs/news/2017/11/canada_imposes_sanctionsonindividualslinkedtohumanrightsviolatio.html

39 Human Rights First approximates that about one-third of the human rights and anti-corruption sanctions that were made under the Magnitsky legislation since 2017 have had a basis in recommendations submitted by the civil society network that the organisations coordinates. Human Rights First. "U.S. GLOBAL MAGNITSKY SANCTIONS." Accessed November 20, 2023. https://humanrightsfirst.org/library/u-s-global-magnitsky-sanctions/

40 Even though there are no official frameworks for making sanctions applications by civil society organisations in the UK or the EU, there is communication on these matters between relevant authorities and anti-corruption organisations. Interview with CSO expert, June 2023.

41 Council Regulation (EU) No 269/2014 of 17 March 2014. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014R0269

42 Bayer, Lili. "EU Sanctions Major Russian Oligarchs." POLITICO (blog), February 28, 2022. https://www.politico.eu/article/eu-sanctions-major-russia-oligarchs-rosneft-transneft/

43 Redress. "Briefing: Comparative Laws for Confiscating and Repurposing Russian Oligarch Assets". 2022. https://redress.org/wp-content/uploads/2022/09/Briefing-on-Comparative-Laws.pdf

44 Parliament of Canada. "An Act to implement certain provisions of the budget tabled in Parliament on April 7, 2022 and other measures". https://www.parl.ca/DocumentViewer/en/44-1/bill/C-19/royal-assent

Government of Canada. Consolidated federal laws of Canada, Special Economic Measures Act (1992). https://laws-lois.justice.gc.ca/eng/acts/S-14.5/index.html

45 Government of Canada. Consolidated federal laws of Canada, Special Economic Measures Act (1992). https://laws-lois.justice.gc.ca/eng/acts/S-14.5/index.html

46 Government of Canada. Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law) (2017). https://laws.justice.gc.ca/eng/acts/J-2.3/FullText.html

47 CBC News. "Canada's Move to Seize Assets from Russian Oligarch Could Test Charter Law: Trade Lawyer," December

22, 2022. https://www.cbc.ca/news/politics/canada-seize-assets-russian-oligarch-charter-1.6695583
48 Government of Canada, "Canada starts first process to seize and pursue the forfeiture of assets of sanctioned Russian oligarch", December 19, 2022. https://www.canada.ca/en/global-affairs/news/2022/12/canada-starts-first-process-to-seize-and-pursue-the-forfeiture-of-assets-of-sanctioned-russian-oligarch.html
49 Government of Canada. Order Respecting the Seizure of Property Situated in Canada (Volga-Dnepr Airlines or Volga-Dnepr Group) SOR/2023-120. 2023. https://www.gazette.gc.ca/rp-pr/p2/2023/2023-06-21/html/sor-dors120-eng.html
50 ibid.
51 ibid.
52 CBC News. "Canada's Move to Seize Assets from Russian Oligarch Could Test Charter Law: Trade Lawyer," December 22, 2022. https://www.cbc.ca/news/politics/canada-seize-assets-russian-oligarch-charter-1.6695583
53 Interview with a Canadian asset recovery expert. September 2023
54 ibid.
55 Charron, Andrea, and Aseltine, Paul. (2016). Calling a Spade a Spade: Canada's Use of Sanctions. Accessed 10h of October 2023 from: https://www.cgai.ca/calling_a_spade_a_spade_canadas_use_of_sanctions#But
56 R. v. Yadegari (M.) (2011), 276 O.A.C. 322. Accessed 10h of October 2023: https://ca.vlex.com/vid/r-v-yadegari-m-681207773
57 R. v. Kalai, 2020 NSSC 351. Accessed 10h of October 2023: https://www.canlii.org/en/ns/nssc/doc/2020/2020nssc351/2020nssc351.html
58 Cusack, John. "Where Are the Sanctioned Russian Assets Frozen in the West and How Much Is Actually Frozen?" Financial Crime News, February 23, 2023. http://thefinancialcrimenews.com/where-are-the-sanctioned-russian-assets-frozen-in-the-west-and-how-much-is-actually-frozen/
59 Transparency International. "Up to the Task? The State of Play in Countries Committed to Freezing and Seizing. Russian Dirty Money." 2022. Table 9. https://images.transparencycdn.org/images/2022-Report-Up-to-the-task.pdf.
60 Transparency International Canada. 'Canada Passes Landmark Legislation to Fight Corruption, Money Laundering, Tax Evasion, and Terrorist Financing.', 2 November 2023. https://transparencycanada.ca/news/billc42updatesnovember2-2023
61 Trichur, Rita. "Exposing the owners of shell companies is a start." The Globe and mail. November 10, 2023. https://www.theglobeandmail.com/business/commentary/article-exposing-the-owners-of-shell-companies-is-a-start-but-canada-must-do/
62 Le Monde. (2022). Russian oligarchs' assets targeted in new complaint. Published on May 25, 2022. Paris, France. Accessed 9th of August 2023 from: https://www.lemonde.fr/en/police-and-justice/article/2022/05/25/russian-oligarchs-assests-targeted-in-new-complaint_5984586_105.html
63 French Ministry of Justice. (2022). Le garde des Sceaux, ministre de la Justice. Accessed 9th of August 2023 from: https://www.justice.gouv.fr/sites/default/files/migrations/portail/bo/2022/20220331/JUSD2207443C.pdf
64 ibid.
65 https://www.vie-publique.fr/discours/284205-bruno-le-maire-01032022-ukraine
66 ibid.
67 Republic Française. (2020). Code penal. Paris: French Republic. Accessed 9th of August 2023 from: https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000028285954
68 Sarah Brimbeuf. (2023). A silver bullet to beat the corruptors at their own game? A look back at a decade of implementation of the presumption of money laundering in France
69 Republic Francaise. (2020). Code Monetaire et fiancier. Referring to the provisions of article 459 of the Customs Code. Retrieved on te 12th of September 2020 from: https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000042498852
70 https://transparency-france.org/
71 Le Monde. (2022). Russian oligarchs' assets targeted in new complaint. Published on May 25, 2022. Paris, France. Accessed 9th of August 2023 from: https://www.lemonde.fr/en/police-and-justice/article/2022/05/25/russian-oligarchs-assests-targeted-in-new-complaint_5984586_105.html
72 Le Monde. (2022). Russian oligarchs' assets targeted in new complaint. Published on May 25, 2022. Paris, France. Accessed 9th of August 2023 from: https://www.lemonde.fr/en/police-and-justice/article/2022/05/25/russian-oligarchs-assests-targeted-in-new-complaint_5984586_105.html
73 Le Monde. (2023). One villa seized and multiple investigations opened: French sanctions against Russian oligarchs begin to bear fruit. Published on March 1, 2023. Paris, France. Accessed 9th of August 2023 from: https://www.lemonde.fr/en/les-decodeurs/article/2023/03/01/one-villa-seized-and-17-investigations-opened-french-sanctions-against-russian-oligarchs-begin-to-bear-fruit_6017803_8.html
74 El Idrissi, Abdelhak. "Enquêtes Contre Les Oligarques Russes : La Justice Saisit Près de 60 Millions d'euros." Le Monde, October 20, 2023. https://www.lemonde.fr/les-decodeurs/article/2023/10/20/enquetes-contre-les-oligarques-russes-la-justice-saisit-pres-de-60-millions-d-euros_6195535_4355770.html
75 El Idrissi, Abdelhak. "L'oligarque Russe Alexeï Kouzmitchev Mis En Examen En France Pour Blanchiment de Fraude Fiscale." Le Monde, November 1, 2023. https://www.lemonde.fr/les-decodeurs/article/2023/11/01/l-oligarque-russe-alexei-kouzmitchev-mis-en-examen-en-france-pour-blanchiment-de-fraude-fiscale_6197730_4355770.html
76 Interview with a French asset recovery expert. July 2023.
77 Erstes Gesetz zur effektiveren Durchsetzung von Sanktionen (Sanktionsdurchsetzungsgesetz I), 2022. https://www.bundesfinanzministerium.de/Content/DE/Gesetzestexte/Gesetze_Gesetzesvorhaben/Abteilungen/Abteilung_IV/20_Legislaturperiode/2022-05-27-SanktionsdurchsetzungsG-I/2-Verkuendetes-Gesetz.pdf?__blob=publicationFile&v=2
78 Federal Ministry for Economic Affairs and Climate. "Federal Cabinet Approves Tool to Help Formulate the Sanctions Enforcement Act," May 10, 2022. https://www.bmwk.de/Redaktion/EN/Pressemitteilungen/2022/05/20220510-federal-cabinet-approves-tool-to-help-formulate-the-sanctions-enforcement-act.html
79 Entwurf eines Zweiten Gesetzes zur effektiveren Durchsetzung von Sanktionen (Sanktionsdurchsetzungsgesetz II), 2022. https://www.bundesfinanzministerium.de/Content/DE/Gesetzestexte/Gesetze_Gesetzesvorhaben/Abteilungen/Abtei-

lung_IV/20_Legislaturperiode/2022-12-27-SanktionsdurchsetzungsG-II/1-Referentenentwurf.pdf?__blob=publicationFile&v=2
80 Entwurf eines Zweiten Gesetzes zur effektiveren Durchsetzung von Sanktionen (Sanktionsdurchsetzungsgesetz II), Section 12, 2022. https://www.bundesfinanzministerium.de/Content/DE/Gesetzestexte/Gesetze_Gesetzesvorhaben/Abteilungen/Abteilung_IV/20_Legislaturperiode/2022-12-27-SanktionsdurchsetzungsG-II/1-Referentenentwurf.pdf?__blob=publicationFile&v=2
81 Federal Ministry of Finance. "Sanctions Enforcement Act II: Making Sure Sanctions Work," December 16, 2022. https://www.bundesfinanzministerium.de/Content/EN/Standardartikel/Topics/Priority-Issues/Financial-Crime/sanctions-enforcement-act-II.html
82 By bringing under its roof ZfS, a new federal police authority, FIU and a new office for AML supervision of the non-financial sector, the focus of BBF will be on "investigations into large and complex cases of financial crime; operational responsibility for implementing sanctions; analysis of suspicious transaction reports; and coordination of supervisory activities in the non-financial sector."
Federal Ministry for Finance. "Stepping up the fight against financial crime," 2022. https://www.bundesfinanzministerium.de/Content/EN/Standardartikel/Topics/Priority-Issues/Financial-Crime/fight-against-financial-crime.html
83 Federal Ministry of Finance. "Implementation of the Sanctions on Russia – Overview." Bundesministerium der Finanzen, March 18, 2022. https://www.bundesfinanzministerium.de/Content/EN/Standardartikel/Topics/Europe/War-in-Ukraine/implementation-of-the-sanctions-on-russia.html
84 German Criminal Code (Strafgesetzbuch), 1998 https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html
85 Trautvetter, Christoph. "Stolen Asset Recovery between Germany and Developing Countries." CiFAR, 2019. https://cifar.eu/wp-content/uploads/2019/06/1.-English-Report-2019-Asset-recovery-Germany.pdf
86 ibid.
87 In practice, most money laundering cases are executed at a regional level based on which the regional state prosecutors, State Offices of Criminal Investigations (Landeskriminalämter), and local police are the authority in charge of money laundering cases. But in some areas of international and serious crime, the Federal Criminal Police Office (Bundeskriminalamt) also acts as a law enforcement agency, with plans to create, new Federal Financial Criminal Police Office (Bundesfinanzkriminalamt). See ICLG. "Anti-Money Laundering Laws and Regulations Germany 2023," 2023. Accessed 7th of August 2023 from: https://iclg.com/practice-areas/anti-money-laundering-laws-and-regulations/germany#:~:text=Criminal%20money%20laundering%20pursuant%20to,offender%20or%20their%20origin%2C%20or
88 Reuters. "Some 4.48 Bln Euros of Russian Assets Frozen in Germany - FinMin." June 15, 2022, sec. European Markets. https://www.reuters.com/markets/europe/some-448-bln-euros-russian-assets-frozen-germany-finmin-2022-06-15/
89 Chazan, Guy. "Germany to Crack down on Companies Evading Russia Sanctions." Financial Times, February 23, 2023. https://www.ft.com/content/6489d5a4-9c66-40be-bd3b-55b31e94542f
90 S. W. R. "Sanktionen gegen Russland und Belarus: Fast 150 Verfahren wegen Verstößen gegen Russlandsanktionen." swr.online, September 23, 2022. https://www.swr.de/swraktuell/verfahren-wegen-mutmasslichen-russland-sanktionsverstoessen-100.html
91 Oltermann, Philip. "German Police Raid Villa Linked to Russian Oligarch Alisher Usmanov." The Guardian, September 21, 2022, sec. Business. https://www.theguardian.com/business/2022/sep/21/german-police-raid-villa-linked-to-russian-oligarch-alisher-usmanov
92 Diehl, Jörg, and Roman Lehberger. "Alischer Usmanow: Ermittlungen wegen Geldwäsche - Gericht kippt Durchsuchungen bei Oligarch." Der Spiegel, May 26, 2023, sec. Wirtschaft. https://www.spiegel.de/wirtschaft/ermittlungen-wegen-geldwaesche-gericht-kippt-durchsuchungen-bei-oligarch-usmanow-a-2bb53e08-1e38-45b7-bec6-28c199be72eb.
93 Jones, Pete, and Graham Stack. "Cyprus Wing of Auditing Giant PwC May Have Breached Sanctions in Work for Oligarch - OCCRP," November 14, 2023. https://www.occrp.org/en/cyprus-confidential/cyprus-wing-of-auditing-giant-pwc-may-have-breached-sanctions-in-work-for-oligarch
94 Vergine, Stefano. "Ecco il tesoro italiano degli oligarchi di Putin," July 4, 2023. https://www.editorialedomani.it/fatti/tesoro-italiano-oligarchi-di-putin-ivcg105k
95 The Republic of Italy. Legislative decree N. 231 of 21 November 2007. https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2007;231
96 The Republic of Italy. Legislative decree N. 109 of 22 June 2007. https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2007-06-22;109
97 The Republic of Italy. Legislative decree N. 221 of 15 December 2017. from: https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2017-12-15;221
98 The Italian Ministry of Economy and Finance (Ministero dell'economia e delle finanze). Comitato di sicurezza finanziaria (Csf). https://www.dt.mef.gov.it/it/attivita_istituzionali/prevenzione_reati_finanziari/comitato_sicurezza_finanziaria
99 Banca di Italia. The role of the Financial Intelligence Unite. Accessed 11th of September 2023 from: https://uif.bancaditalia.it/sistema-antiriciclaggio/uif-italia/index.html?com.dotmarketing.htmlpage.language=1
100 Guardia di Finanza's mandate to counter, investigate and prosecute financial crime is established in the Article 2 of Legislative Decree No. 68/2001 of 19/03/2001.
101 Decree 159/2011 – Article 16 of the "Code of antimafia laws, relevant preventive measures and new antimafia provisions' (Antimafia Code)" (Codice Unico Antimafia). http://www.cip.srl/documenti/Codice_Antimafia_D.lgs._159-2011.pdf
102 Nizzero, Maria. "How to Seize a Billion: Exploring Mechanisms to Recover the Proceeds of Kleptocracy." SOC ACE Research Paper No. 16, 2023. https://static1.squarespace.com/static/63e4aef3ae07ad445eed03b5/t/6481b952463f0a64f75eb37f/1686223214239/how-to-seize-a-billion-rp16.pdf
103 Interview with Guarda di Finanza representative, August 2023
104 CiFAR. Russian Escape Investigations, 2023. https://cifar.eu/russian-escape-investigations/
105 ibid.
106 One yacht belongs to Andrew Melnichenko and another to Eduard Khudaynatov. In total, it seems that Italy froze ei-

ght yachts, several boats, five planes, eight companies, a sculpture, one hundred real estate properties, including 38 villas, and also land, cars, bank accounts and industrial machinery. See Vergine, Stefano. "Ecco il tesoro italiano degli oligarchi di Putin," July 4, 2023. https://www.editorialedomani.it/fatti/tesoro-italiano-oligarchi-di-putin-ivcg105k

107 Braw, E. (2023). Italy Is Leading the World in Seizing Oligarchs' Assets. Accessed 19th of August from: https://foreignpolicy.com/2022/08/17/italy-is-leading-the-world-in-seizing-oligarchs-assets/

108 Vergine, Stefano. "Ecco il tesoro italiano degli oligarchi di Putin," July 4, 2023. https://www.editorialedomani.it/fatti/tesoro-italiano-oligarchi-di-putin-ivcg105k

109 L'Unione Sarda. "Olbia Fined One and a Half Million for Violating Sanctions against Russia," December 6, 2022. https://www.unionesarda.it/en/sardinia/olbia-fined-one-and-a-half-million-for-violating-sanctions-against-russia-m8ee6b5z.

110 CiFAR. Russian Escape Investigations, 2023. https://cifar.eu/russian-escape-investigations/

111 https://eic.network/

112 Saiz, Gonzalo. "Euro SIFMANet: European Sanctions and Illicit Finance Monitoring and Analysis Network: Madrid Report." Conference Report., 2023, p.2. https://static.rusi.org/euro-sifmanet-madrid-report-final-web.pdf.

113 FATF. "Anti-Money Laundering and Counter-Terrorist Financing Measures – Spain, 5th Year Follow-Up Assessment Report of Spain", 2018. http://www.fatf-gafi.org/publications/mutualevaluations/documents/fuar-spain-2019.html

114 Agencia Estatal Boletin Oficial del Estado. Ley 10/2010, de 28 de abril, de prevención del blanqueo de capitales y de la financiación del terrorismo. https://www.boe.es/buscar/act.php?id=BOE-A-2010-6737

Ministerio de Justicia. (2016). Criminal Code. https://www.mjusticia.gob.es/es/AreaTematica/DocumentacionPublicaciones/Documents/Criminal_Code_2016.pdf

115 Ministerio de Justicia. (2016). Criminal Code. https://www.mjusticia.gob.es/es/AreaTematica/DocumentacionPublicaciones/Documents/Criminal_Code_2016.pdf

116 Agencia Estatal Boletin Oficial del Estado. Ley 19/2003, de 4 de julio. Régimen jurídico de los movimientos de capitales y de las transacciones económicas con el exterior y sobre determinadas medidas de prevención del blanqueo de capitales. (Legal regime of capital flows and cross-border economic transactions and of certain money laundering preventive measures). https://www.boe.es/buscar/doc.php?id=BOE-A-2003-13471

117 Servicio Ejecutivo de la Comisión de Prevención de Blanqueo de Capitales, 1993. Accessed 19th of August from: https://www.sepblac.es/en/abt-sepblac/

118 Ministerio de Asuntos Económicos y Transformación Digital. Commission for the Prevention of Money Laundering and Monetary Offences - Composition. Accessed 17th of September 2023: https://www.tesoro.es/en/prevencion-del-blanqueo-y-movimiento-de-efectivo/comision-de-prevencion-del-blanqueo-de-capitales-e-infracciones-monetarias/composition

119 Centralized Organization for the Prevention of Monet Laundering. The collaboration of notaries in the prevention of money laundering, terrorist financing and tax fraud. Accessed 21st of September 2023: https://www.notariado.org/portal/documents/176535/2197006/Folleto+sobre+la+colaboraci%C3%B3n+de+los+notarios+en+la+prevenci%C3%B3n+del+blanqueo+-de+capitales.+Ingl%C3%A9s.+Abril+2018.pdf/f78f808a-facb-0a80-36cb-2912db5fdac4?t=1582208349735

120 The identification of beneficial owners behind companies and real estate properties is aided in Spain via central Beneficial Ownership Database (BDTR), developed by the OCP. See Ibid

121 CiFAR. Russian Escape Investigations, 2023. https://cifar.eu/russian-escape-investigations/

122 Ramírez, Begoña P. "España ha embargado yates, mansiones y cuentas de oligarcas rusos por 1.023 millones de euros." infoLibre, June 26, 2023. https://www.infolibre.es/economia/espana-embargado-yates-mansiones-cuentas-bancarias-oligarcas-rusos-1-023-millones-euros_1_1532691.html

123 Esteve, Valeria Enrich, Paul Amberg, Irene. "Blog Series: Sanctions Enforcement Around the World, the Spanish Perspective." Global Sanctions and Export Controls Blog, June 14, 2023. https://sanctionsnews.bakermckenzie.com/blog-series-sanctions-enforcement-around-the-world-the-spanish-perspective/

124 Ministerio de Asuntos Económicos y Transformación Digital. Commission for the Prevention of Money Laundering and Monetary Offences - Sanctions. Accessed 17th of September 2023: https://www.tesoro.es/index.php/en/prevencion-del-blanqueo-y-movimiento-de-efectivo/comision-de-prevencion-del-blanqueo-de-capitales-e-infracciones-monetarias/estadisticas-e-informes/otros-informes

125 U.S. Attorney's Office, District of Columbia. "Arrest and Criminal Charges Against British and Russian Businessmen for Facilitating Sanctions Evasion of Russian Oligarch's $90 Million Yacht." United States Department of Justice, January 20, 2023. https://www.justice.gov/usao-dc/pr/arrest-and-criminal-charges-against-british-and-russian-businessmen-facilitating

126 Federal Act on the Freezing and the Restitution of Illicit Assets held by Foreign Politically Exposed Persons (Foreign Illicit Assets Act, FIAA), 2015. https://www.fedlex.admin.ch/eli/cc/2016/322/en

127 Portela, Clara. "Sanctioning Kleptocrats. An Assessment of EU Misappropriation Sanctions." CiFAR, 2019. https://cifar.eu/wp-content/uploads/2019/03/CiFAR_Sanctioning-kleptocrats.pdf

128 Federal Acton the Implementation of International Sanctions (Embargo Act), 2002. https://www.fedlex.admin.ch/eli/cc/2002/564/en#art_13

129 ibid.

130 After a working group led by the Federal Office of Justice examined the issue, the Swiss government declared that the "expropriation of private assets of lawful origin without compensation is not permissible under Swiss law". The Federal Council. "Federal Council Has Received Legal Clarifications on Frozen Russian Assets," February 15, 2023. https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-93089.html

131 Swiss parliament. "Schaffung Einer Taskforce Für Die Sperrung Der Vermögenswerte Russischer Und Belarussischer Oligarchinnen Und Oligarchen," March 17, 2022. https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20223214

132 Gross, Dominik. "Der Schweizer Finanzplatz schützt Putins Freunde." AllianceSud (blog), March 3, 2022. https://www.alliancesud.ch/de/der-schweizer-finanzplatz-schuetzt-putins-freunde

133 Swiss parliament. "Schaffung Einer Taskforce Für Die Sperrung Der Vermögenswerte Russischer Und Belarussischer Oligarchinnen Und Oligarchen," March 17, 2022. https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20223214

134 Four former Gazprombank employees of the Swiss branch were convicted of violating Swiss anti-money-laundering law for failing to perform due diligence and allowing the operation of accounts held by Putin's friend. See: Revill, John. "Four Bankers Who Helped Putin's Friend Set up Swiss Bank Account Convicted | Reuters." Reuters, March 30, 2023. https://www.reuters.com/world/four-bankers-who-helped-putins-friend-set-up-swiss-bank-account-convicted-2023-03-30/

135 Bachmann, Agathe Duparc und Robert. "Gallery of Oligarchs in Switzerland." Public Eye, May 9, 2022. https://www.publiceye.ch/en/topics/ukraine/russian-oligarchs-and-switzerland/oligarchs

136 Canetg, Fabio. "Swiss Official Rejects Criticism of Russia Sanctions." SWI swissinfo.ch, September 5, 2023. https://www.swissinfo.ch/eng/politics/swiss-official-rejects-criticism-of-russia-sanctions/48786464

137 Jones, Sam. "G7 Rebukes Switzerland over Russian Sanctions Loopholes." Financial Times, April 14, 2023. https://www.ft.com/content/6fa258e8-f928-4738-808b-df03cb55b16e

138 Miller, Hugo, and Ava Benny-Morrison. "DOJ Steps Up Probe of Credit Suisse and UBS Over Sanctions Breaches." Bloomberg.Com, September 27, 2023. https://www.bloomberg.com/news/articles/2023-09-27/ubs-credit-suisse-face-growing-probe-over-alleged-russian-sanctions-evasion

139 Canetg, Fabio. "Swiss Official Rejects Criticism of Russia Sanctions." SWI swissinfo.ch, September 5, 2023. https://www.swissinfo.ch/eng/politics/swiss-official-rejects-criticism-of-russia-sanctions/48786464

140 Kirez, Timo. "Criminal Proceedings Opened in Switzerland for Attempted Violations of Russia Sanctions." AA, May 8, 2023. https://www.aa.com.tr/en/europe/criminal-proceedings-opened-in-switzerland-for-attempted-violations-of-russia-sanctions/2891940

141 Pilet, François. "Sanctions contre la Russie: le SECO remis à l'ordre par le parquet fédéral." Gotham City, April 12, 2023. https://gothamcity.ch/2023/04/12/sanctions-contre-la-russie-le-seco-remis-a-lordre-par-le-parquet-federal/

142 Interview with a Swiss CSO representatives. September and October 2023.

143 Swiss parliament. "Beteiligung Der Schweiz an Der Multinationalen Taskforce Repo Zur Umsetzung Der Wirtschaftssanktionen Gegen Russland," May 11, 2022. https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20223451

144 Transparency International Suisse. "Geldwäschereibekämpfung: Revision noch zu zaghaft." August 30, 2023. https://transparency.ch/medienmitteilung/geldwaeschereibekaempfung-revision-noch-zu-zaghaft/

145 UK Government. "Government Takes Landmark Steps to Further Clamp down on Dirty Money." GOV.UK, February 28, 2022. https://www.gov.uk/government/news/government-takes-landmark-steps-to-further-clamp-down-on-dirty-money

146 UK Government. "New Measures to Tackle Corrupt Elites and Dirty Money Become Law." GOV.UK, March 15, 2022. https://www.gov.uk/government/news/new-measures-to-tackle-corrupt-elites-and-dirty-money-become-law.

147 NCA. "SARs in Action," 15 March 2022. https://nationalcrimeagency.gov.uk/who-we-are/publications/591-sars-in-action-march-2022/file

148 UK Government. "New Plan Puts UK at the Forefront of Fight against Economic Crime." GOV.UK, March 30, 2023. https://www.gov.uk/government/news/new-plan-puts-uk-at-the-forefront-of-fight-against-economic-crime

149 The implementation of trade sanctions falls within the responsibility of the Department for International Trade (DIT). Trade sanctions are administered by the Export Control Joint Unit (ECJU) or Import Licensing Branch and enforced by His Majesty's Revenue and Customs (HMRC). See Mackness, Sunny Mann, Tristan Grimmer, Courtney. "Blog Series: Sanctions Enforcement Around the G7, The UK Perspective." Global Sanctions and Export Controls Blog, March 10, 2023. https://sanctionsnews.bakermckenzie.com/blog-series-sanctions-enforcement-around-the-g7-the-uk-perspective/

150 See ICLG. "International Comparative Legal Guides." Text. International Comparative Legal Guides International Business Reports. Global Legal Group. United Kingdom. Accessed November 2, 2023. https://iclg.com/practice-areas/sanctions/03-investigations-and-enforcement-across-the-main-sanctions-jurisdictions-and-the-right-response-to-them

151 Nizzero, Maria. "How to Seize a Billion: Exploring Mechanisms to Recover the Proceeds of Kleptocracy." SOC ACE Research Paper No. 16, 2023. https://static1.squarespace.com/static/63e4aef3ae07ad445eed03b5/t/6481b952463f0a64f75eb37f/1686223214239/how-to-seize-a-billion-rp16.pdf

152 UK Government. "United Kingdom Helps Freeze More than £48 Billion in Russian Assets." GOV.UK, March 9, 2023. https://www.gov.uk/government/news/united-kingdom-helps-freeze-more-than-48-billion-in-russian-assets

153 Corera, Gordon. "Russian Oligarchs: Inside K-Cell - the UK Police Unit Raiding Their Homes." BBC, May 27, 2022. https://www.bbc.com/news/uk-61591547#

154 NCA. "Wealthy Russian Businessman Arrested on Suspicion of Multiple Offences." Accessed September 23, 2023. https://www.nationalcrimeagency.gov.uk/news/wealthy-russian-businessman-arrested-on-suspicion-of-multiple-offences

155 Bolton-Jones, James. "Anti-Corruption Commitments in the Integrated Review Refresh – Do They Stack Up?" Spotlight on Corruption (blog), March 15, 2023. https://www.spotlightcorruption.org/corruption-integrated-review-refresh/

156 TheyWorkForYou. "Freezing of Assets," March 9, 2023. https://www.theyworkforyou.com/wrans/?id=2023-03-02.156920.h&s=%22kleptocracy+cell%22

157 Seddon, Max. "Sanctions-Hit Oligarch Mikhail Fridman Returns to Moscow." Financial Times, October 9, 2023. https://www.ft.com/content/d9d3e2d0-fbec-4759-ab46-17071b2c93f9

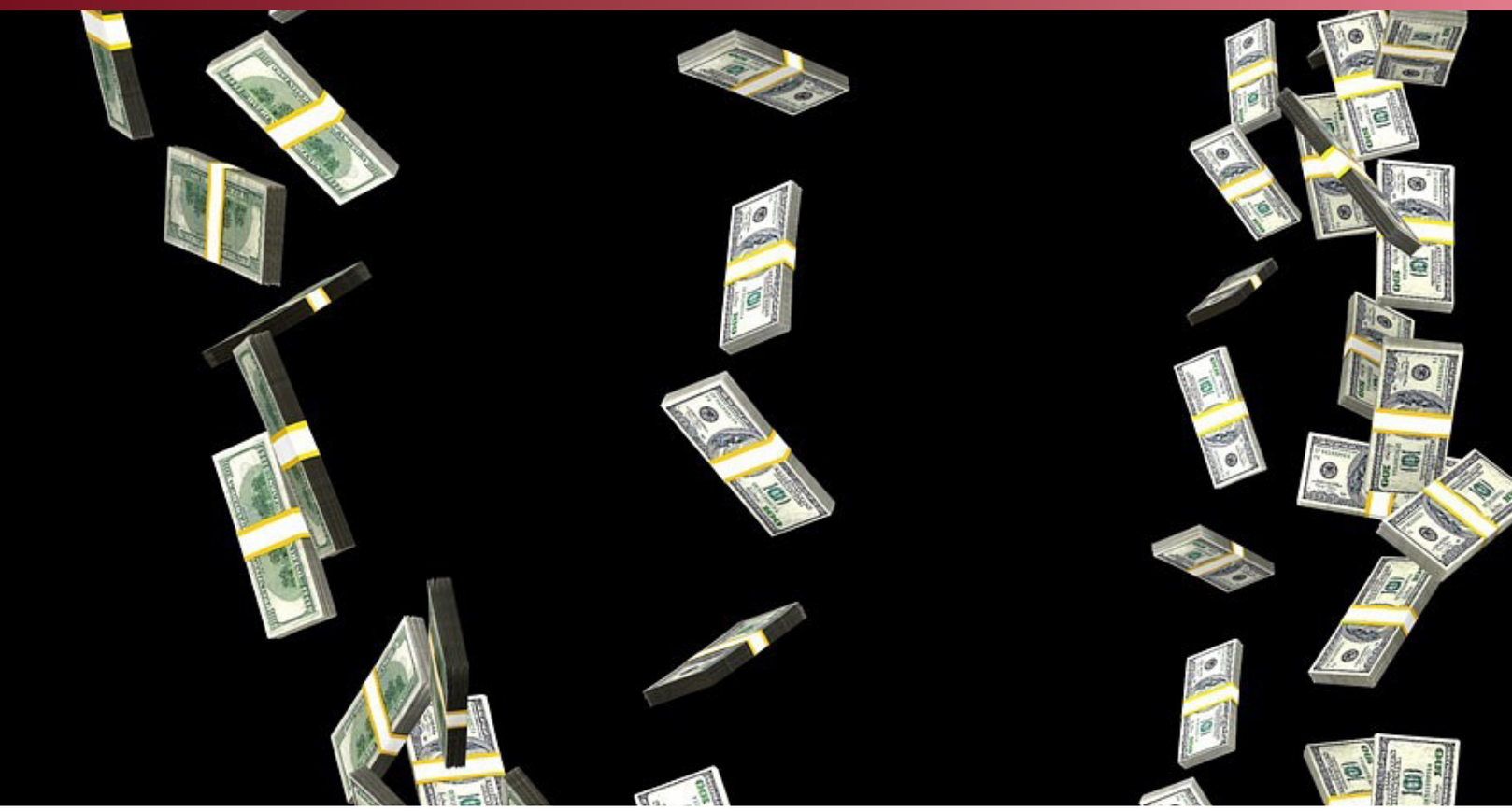
158 Davies, Rob. "Oligarchs Fret about Their Assets as UK Fights to Keep Tabs on Their Spending." The Guardian, August 5, 2023, sec. Business. https://www.theguardian.com/business/2023/aug/05/oligarchs-fret-about-their-assets-as-uk-fights-to-keep-tabs-on-their-spending

159 U.S. Department of Justice. "Attorney General Merrick B. Garland Announces Launch of Task Force KleptoCapture," March 2, 2022. https://www.justice.gov/opa/pr/attorney-general-merrick-b-garland-announces-launch-task-force-kleptocapture

160 ibid.

161 .S. Departments of Justice. "U.S. Departments of Justice and Treasury Launch Multilateral Russian Oligarch Task

Force," March 16, 2022. https://www.justice.gov/opa/pr/us-departments-justice-and-treasury-launch-multilateral-russian-oligarch-task-force
162 U.S. Department of Justice. "Deputy Attorney General Lisa Monaco Delivers Remarks at American Bar Association National Institute on White Collar Crime," March 2, 2023. https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-monaco-delivers-remarks-american-bar-association-national
163 Vahabzadeh, Terence Gilroy, Alexandre (Alex) Lamy, Orfeh. "BIS, DOJ, and OFAC Publish Compliance Note Warning Public of Russian Evasions of Export Controls and Sanctions." Global Sanctions and Export Controls Blog, March 10, 2023. https://sanctionsnews.bakermckenzie.com/bis-doj-and-ofac-publish-compliance-note-warning-public-of-russian-evasions-of-export-controls-and-sanctions/
164 Department of the Treasury. "A Framework for OFAC Compliance Commitments," n.d. https://ofac.treasury.gov/media/16331/download?inline
165 Congressional Research Service. "Enforcement of Economic Sanctions: An Overview," 2022. https://crsreports.congress.gov/product/pdf/IF/IF12063
166 U.S. Department of Justice. "Justice Department Seeks Forfeiture of More than $20 Million in Assets Relating to Unlawful Use of U.S. Financial System to Evade and Violate Iranian Sanctions," June 3, 2020. https://www.justice.gov/opa/pr/justice-department-seeks-forfeiture-more-20-million-assets-relating-unlawful-use-us-financial
167 U.S. Department of Justice. "FACT SHEET: Justice Department Efforts in Response to Russia's February 2022 Invasion of Ukraine," 2023. https://www.justice.gov/opa/press-release/file/1569776/download
168 Cassella, Stefan D. "Yachts and Airplanes: What Procedures and Legal Theories Are Being Used to Forfeit Russian Assets in the United States?," February 6, 2023. https://eucrim.eu/articles/yachts-and-airplanes-what-procedures-and-legal-theories-are-being-used-to-forfeit-russian-assets-in-the-united-states/
169 Indicted over 30 individuals and 2 corporate entities accused of sanctions evasion, export control violations, money laundering, and other crimes. See U.S. Department of Justice. "FACT SHEET: Justice Department Efforts in Response to Russia's February 2022 Invasion of Ukraine," 2023. https://www.justice.gov/opa/press-release/file/1569776/download
170 Cassella, Stefan D. "Yachts and Airplanes: What Procedures and Legal Theories Are Being Used to Forfeit Russian Assets in the United States?," February 6, 2023. https://eucrim.eu/articles/yachts-and-airplanes-what-procedures-and-legal-theories-are-being-used-to-forfeit-russian-assets-in-the-united-states/
171 Reuters. "U.S. Attorney General OKs Transfer of Forfeited Funds from Russia Oligarch for Use in Ukraine." May 10, 2023, sec. Europe. https://www.reuters.com/world/europe/us-attorney-general-oks-transfer-forfeited-funds-russia-oligarch-use-ukraine-2023-05-10/
172 U.S. Department of the Treasury. "Kleptocracy Asset Recovery Rewards Program," 2023. Accessed 10 October 2023. https://home.treasury.gov/about/offices/terrorism-and-financial-intelligence/terrorist-financing-and-financial-crimes/kleptocracy-asset-recovery-rewards-program
173 https://www.justice.gov/opa/pr/russian-elites-proxies-and-oligarchs-task-force-ministerial-joint-statement
174 https://ec.europa.eu/commission/presscorner/detail/en/IP_22_1828
175 ibid.
176 https://www.europol.europa.eu/media-press/newsroom/news/eu-wide-operation-targeting-criminal-assets-in-relation-to-russian-invasion-of-ukraine



CiFAR

CIVIL FORUM FOR ASSET RECOVERY