

Implementing Firewalls: Enabling Business Continuity for Non-Sanctioned Individuals and Businesses



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Navigating Regulatory Challenges

Amid escalating sanctions, particularly targeting those with Russian ties, many non-sanctioned individuals and businesses are facing significant operational and reputational challenges. This is largely due to the scope of secondary sanctions and the increased concerns about inadvertent regulatory breaches, resulting in delays, paralysed transactions, and business disruptions even for those not directly sanctioned. A promising solution to these issues could be the implementation of firewalls, as recommended by the European Commission under the guidance note published on 29 November 2023.

Notwithstanding that the European Commission's guidance note specifically refers to the implementation of firewalls to avoid negative impacts on EU operators when dealing with entities owned or controlled by designated persons which are subject to an asset freeze, the same principle could be applied in a wider context. The firewalls envisaged by the Commission effectively decouple an entity from a designated person, and by obtaining an official confirmation of compliance from the Member States' national competent authorities which implement sanctions, with the services of an external third party such as a regulated auditor, the presumption of control and related risks are removed. This allows the entity to continue operations while keeping the designated person's funds and economic resources frozen.

This firewall approach could also be beneficial for non-sanctioned individuals and businesses with Russian connections, helping to reassure financial institutions and other stakeholders of their compliance with regulatory requirements. For example, a non-sanctioned settlor could be decoupled from a trust by firewall implementation, effectively assuring organisations, such as banks, that the settlor does not control the trust.

Sectors for Implementation

According to the guidance published by the European Commission on 3 May 2023, incidents involving agricultural trade, such as those affecting wheat and fertilizers, have highlighted significant concerns regarding global food stability. Consequently, when implementing restrictive measures, the European Union is committed to avoiding actions that could worsen global food insecurity. While Regulation 269/2014 includes exceptions that permit limited activities for frozen entities, gaps persist for agricultural traders controlled by designated persons. Expanding these exceptions risks undermining asset freezes, whereas maintaining long-term asset freezes could result in severe consequences, including bankruptcy.

To effectively manage these risks, the implementation of firewalls for entities operating within essential sectors is paramount to ensure the uninterrupted continuation of critical operations. For instance, in the energy sector, the persistent production and distribution of oil and gas which is vital for both economic stability and daily functioning, can be sustained. Similarly, in the healthcare sector, ensuring a continuous supply of medicines and medical equipment is crucial for pharmaceutical and medical supply companies to operate seamlessly. In the transportation and logistics sector, the timely delivery of essential goods such as food, medical supplies, and energy resources, which are indispensable for economic stability would be facilitated. Furthermore, the technology sector would gain protection from the detrimental effects of sanctions, thereby fostering ongoing innovation and support for other critical sectors, including healthcare and education. Additionally, in the financial sector, institutions would be better equipped to provide essential funding and services, thereby preserving economic stability and growth despite restrictive measures.

A Strategic Path Forward Ensuring Compliance and Business Continuity

Given the increasing intricacies of sanctions, the strategic deployment of firewalls could emerge as an essential mechanism for mitigating operational disruptions and safeguarding reputational integrity for entities not subject to sanctions. The European Commission's guidance indicates that, through stringent compliance protocols and comprehensive third-party verification, businesses can effectively decouple themselves from sanctioned individuals. This approach enables the continuation of operations while adhering to regulatory mandates.

Adopting such a strategy provides a sophisticated means of addressing the challenges posed by secondary sanctions, ensuring the ongoing functionality of critical sectors such as agriculture, energy, healthcare, and finance. By reinforcing regulatory compliance and enhancing economic stability, this strategy also supports global supply chains, offering a robust framework for navigating the evolving landscape of international sanctions.

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