# Germany's Sanctions Enforcement Acts

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On the 26th of October, the German Federal Government published the draft text of the Second Sanctions Enforcement Act (*Sanktionsdurchsetzungsgesetz II – SDG II*), which is set to pass by the end of this year. The proposal is the second part of the previously planned two-part legislative package and builds on the First Sanctions Enforcement Act (*Sanktionsdurchsetzungsgesetz I – SanktDG I*), which came into force in the end of May earlier this year.

Since the beginning of the Russian-Ukraine war, Germany has faced hurdles in achieving effective enforcement of EU sanctions. Specifically, there was a need for a clearer accordance of legal power to competent authorities, an improved coordination amongst the agencies and legal as well as administrative instruments to investigate and identify assets. In tandem, these two laws will address these deficiencies and provide teeth to EU's economic diplomacy efforts against Russia.

This briefing will cover the key features of both legal acts and discuss the implications to private individuals and businesses.

## The First Sanctions Enforcement Act (SDG I)

The SDG I primarily aims to provide competent authorities, in particular the Deutsche Bundesbank, the Federal Financial Supervisory Authority (BaFin), the Central Office for Financial Transaction Investigations (FIU), the Customs Criminal Police Office (ZKA) and the Federal Office of Economic Affairs and Export Control (BAFA), with more extensive powers in the enforcement of EU sanctions:

- SDG I enables the competent authorities to exchange information relevant to sanctions, including personal data in compliance with data protection regulations. The competent authorities may also retrieve data from the German Transparency Register, in which the beneficial owners are recorded.

- The competent authorities are authorised to summon and question witnesses, secure evidence, search homes and business premises, inspect land registers and other public registers to identify sanctioned persons' assets. Additionally, these authorities may also identify and inquire information on bank accounts, safe deposit boxes and securities accounts of sanctioned persons.

- Furthermore, to clarify ownership, SDG I places criminal obligation upon sanctioned person to report any funds and other economic resources within the scope of German law, that are subject to a limitation of disposition by EU sanctions, to the Deutsche Bundesbank or the Federal Office of Economic Affairs and Export Control. The penalty of failure to report is up to one year imprisonment or a fine. In the future, the reporting is to go to the central office for sanction enforcement.

- SDG I also allows securing funds and other economic resources, located in Germany, pending clarification of ownership.

When it comes to sanctioned persons and identifying their assets, SDG I contains the power of criminal law instruments in an administrative setting and provides the competent authorities with more tools for an effective enforcement of EU Sanctions.

## The Second Sanctions Enforcement Act (SDG II)

Building upon SDG I, the proposed Second Sanctions Enforcement Act II (SDG II) will bring forth further structural changes in sanctions enforcement and will also facilitate the fight against money laundering. The draft texts of SDG II embodies the following features:

- SDG II will create a Central Office for Sanctions Enforcement, which will be nested under the Central Customs Authority initially and subsequently be relocated under the newly established Federal Financial Crime Authority. As discussed above, once established, a sanctioned person shall notify this office his or her assets within the scope of German law, that are subject to a limitation of disposition by EU sanctions. Moreover, the central office will be able to conduct investigations on sanctioned persons (natural or legal) as well as on assets or economic resources.

- SDG II will set up a central register, which will record information on funds and economic resources subject to limitation of disposition by EU sanctions. All competent authorities will be able to access this register.

- Through the SDG II the United Nations' sanctions list will be directly applicable in Germany without the need for an implementing law.

- Under SDG II, the Federal Financial Supervisor Authority may appoint an independent special commissioner to monitor sanctions compliance in companies within the scope of German law. The special commissioner will have broad authority to ensure that the company complies with sanctions regulations.

- Foreign companies that acquire real estate in Germany, either directly or through share deals, are already required to notify the German Transparency Register. SDG II extends this obligation to all existing real estate ownerships. The reporting deadline is 31st of December 2023. The Transparency Register will also be connected with the national land register to allow synergy of data and information.

In addition to the reporting obligations, SDG II will prohibit cash payments in real estate transactions.

- Furthermore, SDG II tightens existing notification requirements for legal entities to the Transparency Register and implements additional notification requirements for notaries involved. It also stipulates that an entity must provide a reason for doing so if it could not identify a beneficial owner and had to rely on a legal representative. These notification obligations also exist for foreign legal entities with assets in Germany.

- In the financial market, SDG II will have the authority to classify sanctioned persons and their legal representatives "unreliable".

## Practical Impacts

As a practical matter, SDG II places additional requirements on everyday lives. Specifically, as discussed above, SDG II will have impacts on real estate transactions and natural or legal persons who own (shares of) real estate directly or indirectly. In general, all entities organised under German law as well as foreign entities might bear additional notification obligations pursuant to SDG II.

Moreover, SDG II will most likely add additional red tape to entities which have numerous shareholders or have difficulties in identifying a beneficial owner, e.g., in a listed company, in which many individual and institutional investors own shares to the company.

## Conclusion

BLOMSTEIN encourages in particular foreign companies with assets in Germany to review to what extent they are subject to new notification requirements pursuant to SDG II.

BLOMSTEIN is at your disposal at any time to answer questions on the practical implementation as well as on the scope of application of these measures. Please do not hesitate to contact Pascal Friton, Roland M. Stein, Florian Wolf, Laura Louca or Tobias Ackermann.