

GERMANY

‘The issues are complex, and so far the sanctions regulations have been unclear on many matters. The wording is unclear. The interpretation is unclear.’

Dr. Laura Louca, senior associate at Blomstein



Dr. Laura Louca – a senior associate at Blomstein in Berlin – spoke to *WorldEcr* about her practice and the challenges that her clients face when dealing with sanctions compliance in Europe’s complex regulatory environment.

A great challenge with compliance has been the unclear guidance received from different regulators. And – as Louca explained – both Brussels and Berlin have room to improve. ‘The Commission has taken its time on many questions and interpreting the sanctions regulations. We also had questions in Germany, specifically, that have been answered differently than how the Commission answered them.’ While Germany has tended to adjust its rules to align with the EU’s regulations, there are still several areas of continual misalignment.

However – for Louca – no policy area has caused more challenges than enforcement against sanctions circumvention. ‘There has been this announcement that the [upcoming] EU sanctions regulation is going to have all these prohibitions regarding circumvention,’ said Louca, ‘but on the local side [referring to Germany] we haven’t seen any restrictions on that.’

Louca went onto explain that – while companies were authoring export agreements with clauses stipulating that the receiving business cannot sell products on to Russia – she was worried that this rule-setting may not be having its intended effect. ‘Some clients in some countries will sign whatever you require them to, but is that really going to tackle the issue of circumvention? Or is it putting more red tape on the companies? Do they have to follow up? Do they have to do due diligence every few months to see if the client is actually following that clause?’

In our conversation, Louca bemoaned the lack of enforcement action in Germany, but – in a follow-up email several days later – she noted some recent improvement. She wrote, ‘I spoke to a state attorney on Friday and she told me that she and her colleagues are receiving approximately two new cases per week in matters regarding Russian sanctions. So, apparently, the German investigating authorities are starting to pick up several (also lots of smaller) cases. I believe we are about to see a big wave of investigations, possibly even court cases in the next few months/years.’



FRANCE

‘Every time an international client has sanctions questions we need to be able to line up teams that can cover the US, UK, and EU.’

Pascal Bine, partner at Skadden



‘There have been 12 rounds of sanctions in nearly two years. That’s a lot of change... Our work entails giving clients the right advice based on the current EU sanctions rules and most up-to-date guidelines.’

Wesley Lainé, Associate at Skadden



In our conversation with Pascal Bine and Wesley Lainé – both at Skadden in Paris – the pair emphasised the complexity of advising a client base that was exposed to several different regulators.

‘Before February 2022, sanctions [law] was mostly about US sanctions,’ explained Bine. ‘Since February 2022, this has completely changed. We have three main regimes of sanctions targeting Russia.’

Following the Russian invasion of Ukraine, the EU and UK rapidly scaled-up their sanctions programmes. The greatest challenge, from a legal perspective, was learning the new regulations quickly, especially in areas where they differed.

‘There is a convergence on sanctions policies between the UK, US, and EU. There is a dialogue between the authorities. But there are some differences. Take energy for instance, for the EU, the initial energy package targeted the import of Russian crude oil and petroleum products, and not natural gas,’ said Bine.

The structure of the EU also complicates the legal environment. While sanctions regulations are set on an EU level, there are implementing

authorities within each Member State that act somewhat independently. This unique situation has given rise to cooperation amongst the various international offices at Skadden, explained Bine, to make sure there is a common view on the applicability of sanctions rules.

Looking forward, deterrence approaches such as secondary sanctions are catching Wesley Lainé’s attention. While the EU has been historically opposed to extraterritoriality – particularly US extraterritorial sanctions enforcement against Iran – EU regulators may be beginning to see the value of secondary sanctions as a tool to influence Russian actions.

‘That’s something that is being discussed in the press, but the EU already has deterrence tools in its Russia sanctions programme that it can use to enforce its sanctions and prevent circumvention, notably article 3(h) of Council Regulation 269/2014... Some reports have suggested that sanctions have not been effective, while others have cautioned that it is an error to conclude that sanctions have failed, but the Russian economy is now a war economy,’ said Lainé.

