

International **Comparative** Legal Guides



Sanctions **2020**

A practical cross-border insight into sanctions law

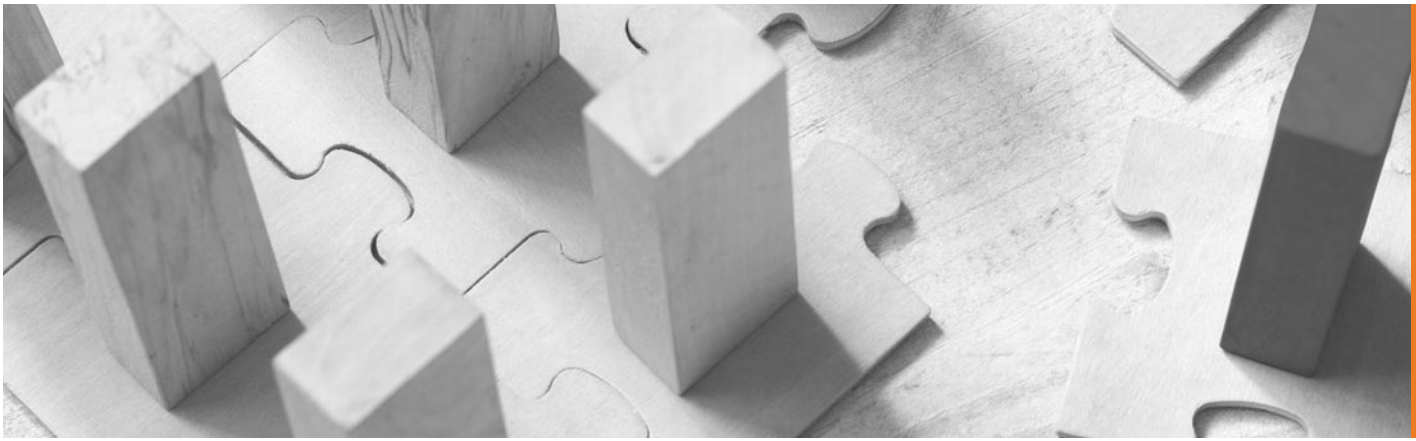
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Austria

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1 Overview

1.1 Describe your jurisdiction's sanctions regime.

The Austrian sanctions regime is almost exclusively based on sanctions measures adopted by the United Nations (“UN”) and the European Union (“EU”). The Austrian Sanctions Act (*Sanktionengesetz* – “SanktG”) essentially regulates the domestic implementation of these sanctions. Only if the UN Security Council were to adopt resolutions concerning terrorist groups in Europe would these UN sanctions have to be implemented in national law, because the EU does not currently have the power to regulate such matters.

Pursuant to Sec 2 of the SanktG, the Austrian National Bank (*Österreichische Nationalbank* – “OeNB”) is responsible for national implementing measures, in particular when it comes to the freezing of assets. The Austrian Federal Government (*Bundesregierung*), on the other hand, is responsible for:

- the confiscating means of transport and goods;
- prohibiting the provision of services; and
- the exemption from the obligation to comply with civil claims relating to contracts or other legal transactions affected by sanctions of the UN or the EU, etc.

National implementation measures are to be issued either in the legal form of a regulation (*Verordnung*) or an administrative decision (*Bescheid*).

The enactment and revocation of the OeNB's regulations require the consent of the Federal Government; in the event of imminent danger, the consent of the Federal Chancellor (*Bundeskanzler*) is sufficient. The enactment of regulations by the Federal Government requires the consent of the main committee (*Hauptausschuss*) of the National Council (*Nationalrat* – Nationalrat is one of the two chambers of the Austrian Parliament; the other chamber is the representation of the nine provinces [*Bundesrat*]; and the *Hauptausschuss* is a parliamentary organ of Nationalrat which participates in the administration on the federal level [*Bund*]).

In addition to the sanctions regime, Austria also has an export control regime. For further details, see question 2.10.

1.2 What are the relevant government agencies that administer or enforce the sanctions regime?

The responsibilities of the Federal Government and the OeNB with regard to domestic implementing measures have already been

mentioned in question 1.1 above. In addition, the following competencies regarding sanctions exist:

In Austria, the Ministry for Europe, Integration and Foreign Affairs (*Bundesministerium für Europa, Integration und Außenbeziehungen*) is responsible for dealing with and coordinating international sanctions (in particular within the framework of the UN and the EU and for legal issues in connection with the negotiation and implementation of sanctions).

The Federal Minister of the Interior (*Bundesminister für Inneres*) plays an important role here and is responsible for monitoring the domestic implementation of sanctions, except for legal acts pursuant to Sec 2 SanktG enacted by the OeNB (see question 1.1 above).

In addition, the land register courts (*Grundbuchgerichte*) and commercial register courts (*Firmenbuchgerichte*) have certain functions in connection with the recording in the land register (*Grundbuch*) or commercial register (*Firmenbuch*) that certain assets are frozen. With regard to assets which are frozen on the basis of a legal act of the Federal Government, or on the basis of directly applicable sanction measures of the EU in the land register or the commercial register, the Federal Minister of the Interior shall notify the court competent for the property or the legal entity of this fact. Based on this notification, the court shall *ex officio* enter in the land register or the commercial register that the assets of the person or institution concerned are frozen.

Finally, the individual other federal ministries (*Bundesministerien*) are also obliged under the Federal Ministries Act (*Bundesministerienengesetz*) to take any implementing measures for the implementation of sanctions in their own sphere of influence.

The Federal Ministry for Digital and Economic Affairs (*Bundesministerium für Digitalisierung und Wirtschaftsstandort*) is the national authority for the enforcement of the Foreign Trade and Payments Act (*Außenwirtschaftsgesetz* – “AußWG”) and the associated implementing regulations.

2 Legal Basis/Sanctions Authorities

2.1 What are the legal or administrative authorities for imposing sanctions?

There are no legal or administrative authorities in Austria that can impose sanctions. As explained above in questions 1.1 and 1.2, in Austria the competent authorities can only adopt national implementing measures under the SanktG. These are primarily the responsibility of OeNB. Further responsibilities lie with the Federal Government as a collegial body, the Ministry for Europe, Integration and Foreign Affairs and the Ministry of the Interior,

as well. Measures under foreign trade law are the responsibility of the Ministry for Digital and Economic Affairs.

2.2 Does your jurisdiction implement United Nations sanctions? Describe that process. Are there any significant ways in which your jurisdiction fails to implement United Nations sanctions?

Yes. Concerning the implementation of UN actions, see questions 1.1 and 1.2. We are not aware of any significant failure to implement UN sanctions.

2.3 Is your country a member of a regional body that issues sanctions? If so: (a) does your country implement those sanctions? Describe that process; and (b) are there any significant ways in which your country fails to implement these regional sanctions?

Not applicable. Austria is, of course, a Member State of the EU and participates in the development of EU sanctions in the relevant bodies. We understand the EU as a supranational organisation, but not as a “regional body” in the sense of this question.

2.4 Does your jurisdiction maintain any lists of sanctioned individuals and entities? How are individuals and entities: a) added to those sanctions lists; and b) removed from those sanctions lists?

Austria does not keep its own lists of sanctions. However, there are domestic implementation measures pursuant to Sec 2 SanktG, which are issued by regulation or through an administrative decision of the OeNB or the Federal Government. These ordinances also list the persons, groups and organisations concerned.

2.5 Is there a mechanism for an individual or entity to challenge its addition to a sanctions list?

It is possible to challenge implementation measures pursuant to Sec 2 SanktG in the form of an ordinance before the Constitutional Court (*Verfassungsgerichtshof*). An appeal may be lodged against administrative decisions of the OeNB or the Federal Government, which shall be decided by the Federal Administrative Court (*Bundesverwaltungsgericht*) at first instance and finally by the Supreme Administrative Court (*Verwaltungsgerichtshof*).

So far, there is no case law available on this subject in Austria.

2.6 How does the public access those lists?

As set out above, Austria does not keep its own lists of sanctions. However, the ordinances of the OeNB (see question 2.4) are published on its homepage or must be published in the Federal Law Gazette (*Bundesgesetzblatt*).

With regard to the entries in the land register (*Grundbuch*) and the commercial register (*Firmenbuch*) (see question 2.1), it should be noted that these are public registers which can be inspected by anyone.

2.7 Does your jurisdiction maintain any comprehensive sanctions or embargoes against countries or regions?

This is not applicable in Austria.

2.8 Does your jurisdiction maintain any other sanctions?

This is not applicable in Austria.

2.9 What is the process for lifting sanctions?

Since Austria does not have its own sanctions regime, sanctions are lifted at EU or UN level. National implementation measures pursuant to Sec 2 paras 1 and 2 SanktG must be revoked as soon as the underlying sanction measures of the UN or the EU are repealed.

If a domestic legal act is subsequently repealed pursuant to Sec 2 para 1 or directly applicable sanction measures of the EU, the Federal Minister of the Interior shall inform the competent court that it will delete the entries made in the land register or the commercial register (see question 2.1).

2.10 Does your jurisdiction have an export control regime that is distinct from sanctions?

In addition to the sanctions regime, which is essentially based on EU and UN sanctions, Austria also has its own export control regime. The legal basis for this is the AußWG. Essential areas of regulation of the AußWG are:

- export control, in particular concerning export, transit, brokerage of defence and dual-use products (accompanying provisions of Regulation (EC) no 428/2009) and the provision of technical assistance for military end-use;
- control of the movement of defence-related products within the EU for the implementation of Directive 2009/43/EC; and
- control of takeovers of Austrian companies by persons or companies from third countries (outside the EU, EEA, Switzerland): approval is only required for the takeover of companies in certain sectors that are subject to the accounting requirements of the Austrian Commercial Code if a voting interest of at least 25 per cent or a controlling influence is acquired in these companies. The assessment criteria refer to the impact of the takeover on security of supply.

2.11 Does your jurisdiction have blocking statutes or other restrictions that prohibit adherence to other jurisdictions' sanctions or embargoes?

No. This is regulated on an EU basis.

2.12 Does your jurisdiction impose any prohibitions or threaten any sanctions consequences for transactions that do not have a connection to that jurisdiction (sometimes referred to as “secondary sanctions”)?

No, it does not.

3 Implementation of Sanctions Laws and Regulations

3.1 What parties and transactions are subject to your jurisdiction's sanctions laws and regulations? For example, do sanctions restrictions apply based on the nationality of the parties involved? Or the location where the transactions take place?

This is not applicable in Austria.

3.2 Are parties required to block or freeze funds or other property that violate sanctions prohibitions?

The OeNB's implementation measures mainly affect banks, which are responsible for freezing the accounts and credit balances concerned.

3.3 Are there licences available that would authorise activities otherwise prohibited by sanctions?

If it does not oppose the purpose of the sanctions, the OeNB may grant specific authorisations, in particular for the use of frozen funds or making assets available for essential human needs, and furthermore for payments of taxes, compulsory insurance premiums and fees for public utility services such as gas, water, electricity and telecommunications and payments of claims originating before the adoption of sanction measures. Requests for authorisation shall be made to the OeNB.

3.4 Are there any sanctions-related reporting requirements? When must reports be filed and what information must be reported?

In the exercise of their functions, the Federal Minister of the Interior and the OeNB shall be entitled to request the necessary information and notifications from natural and legal persons and from other entities possessing legal personality, and to identify and process data; this right also includes the power to consult on-site books, documents and computer data carriers and to duplicate them. If the information or documents provided are insufficient, or if there is reasonable doubt concerning the accuracy or completeness of the information or documents, the Federal Minister of the Interior and the OeNB shall be entitled to request respective explanations or evidence.

3.5 How does the government convey its compliance expectations? Are certain entities required to maintain compliance programmes? What are the elements of a compliance programme required (or recommended) by the competent regulator(s)?

This is not applicable in Austria.

4 Enforcement

Criminal Enforcement

4.1 Are there criminal penalties for violating economics sanctions laws and/or regulations?

There exist both administrative penal (*verwaltungsstrafrechtliche*) provisions and criminal penal (*strafrechtliche*) provisions. Administrative penal fines are imposed by public authorities and not by courts, and are normally lower than criminal penalties, although detention measures are the exception. These criminal and administrative penal provisions are set out in Sec 11 *et seq.* of the SanktG and are generally applicable in case national measures implementing sanctions have been breached. Administrative penal sanctions are similar to those understood as “civil penalties” or “civil fines” in the UK or US.

4.2 Which government authorities are responsible for investigating and prosecuting criminal economic sanctions offences?

The prosecution of criminal offences is the responsibility of the public prosecutor's offices (*Staatsanwaltschaften*). The prosecution of administrative offences is the responsibility of the local district administrative authority (*Bezirksverwaltungsbehörde*) or, if available, the *Landespolizeidirektion*.

4.3 Is there both corporate and personal liability?

Criminal penal provisions in Austria are basically only applicable to natural persons. However, some years ago the concept of corporate responsibility for criminal conduct of associations (*Verbände*) was introduced to the Austrian legal system, and is regulated by the Act on Corporate Criminal Liability (*Verbandsverantwortlichkeitsgesetz* – “VbVG”). Pursuant to the VbVG, legal entities can be held responsible and fined for criminal offences which have been committed in favour of the legal entity or are attributable to the legal entity by the misconduct of its management.

As to administrative offences, corporate liability does not exist. In administrative criminal law, the persons appointed to represent the company externally, i.e. the management, are punished. Legal entities, however, are jointly and severally liable for the penalties imposed on management.

4.4 What are the maximum financial penalties applicable to individuals and legal entities convicted of criminal sanctions violations?

The fines for administrative offences are up to EUR 50,000 per offence. The attempt is also punishable. In the case of a criminal penal provision, the offender is to be punished with a prison sentence of up to one year or a fine of up to 360 daily rates. The amount of the daily rates depends on income.

4.5 Are there other potential consequences?

The integrity of the person concerned will be verified for the purpose of carrying out certain economic activities or for the performance of certain management functions. This applies not only to certain sensitive trades (*sensible Gewerbe*) but also to the managers (*Geschäftsleiter*) of a bank. Persons who have been punished for infringements under the SanktG could therefore lack the reliability to carry out certain occupations: the function of a managing director under trade law (*gewerberechtlicher Geschäftsführer*); or the managing director of a bank. In award procedures under EU and Austrian public procurement law, the reliability of the management of a bidder is also checked, and there could be a risk of exclusion from the award procedure if a member of management was punished for violating sanctions.

Civil Enforcement

4.6 Are there civil penalties for violating economics sanctions laws and/or regulations?

See our answers to questions 4.1 to 4.5. Civil penalties can be compared to “administrative penal sanctions” or “administrative fines” in Austria.

4.7 Which government authorities are responsible for investigating and enforcing civil economic sanctions violations?

This is not applicable in Austria.

4.8 Is there both corporate and personal liability?

This is not applicable in Austria.

4.9 What are the maximum financial penalties applicable to individuals and legal entities found to have violated economic sanctions?

This is not applicable in Austria.

4.10 Are there other potential consequences?

This is not applicable in Austria.

4.11 Describe the civil enforcement process, including the assessment of penalties. Are all resolutions by the competent authorities public?

Decisions of the authority on administrative penalties are not public. Judicial criminal proceedings are open to the public, but first instance judgments are not published. Decisions of administrative courts (*Verwaltungsgerichte* – the administrative penalty imposed by the authority may be challenged before an administrative court) and courts of appeal (*Berufungsgerichte*) (concerning judicial offences) are published anonymously on the internet.

4.12 Describe the appeal process. Have companies challenged penalty assessments in judicial proceedings?

So far, no case law is available in Austria.

4.13 Are criminal and civil enforcement only at the national level? Is there parallel state or local enforcement?

In Austria, the federal provinces have no regulatory power with regard to sanctions.

4.14 What is the statute of limitations for economic sanctions violations?

For administrative offences, a statutory limitation period of 18 months applies. For criminal offences, a statutory limitation period of three years applies.

5 General

5.1 If not outlined above, what additional economic sanctions-related measures are proposed or under consideration?

Even if these are not “economic sanctions-related measures” in the narrower sense, the “legal fate” of civil law contracts must be mentioned as a possible negative side effect of sanctions. The

Austrian legal system does not contain any explicit provisions in this regard.

- In Austrian civil law (Sec 879 of the Austrian General Civil Code – *Allgemeines Bürgerliches Gesetzbuch* – “ABGB”), however, there is a provision setting out that contracts that violate legal prohibitions are null and void, or at least floating void. However, there is no case law as to whether sanctions are such a “legal prohibition”.
- In addition, one could also consider whether contracts that violate sanctions are impossible within the meaning of Sec 878 ABGB because they may not be fulfilled, and therefore a withdrawal from the contract is possible.
- Furthermore, many contracts contain a *force majeure* clause. The adoption of international sanctions can be qualified as *force majeure*. Therefore, such a *force majeure* clause will give the parties the right of withdrawal from the contract or at least the freedom from performance.
- Finally, in the case of continuing obligations, there is a generally accepted legal principle in Austria that a contracting party can terminate such a continuing obligation for important reasons (i.e., if it becomes unreasonable for a contracting party to continue the contractual relationship).

However, there are a few relevant provisions in the SanktG:

- Sec 2 para 2 no 6 of the SanktG stipulates that the Federal Government may, by ordinance or administrative decision, order exemption from the obligation to fulfil civil law claims if their fulfilment could impair the effectiveness of UN or EU sanctions. On the contrary, at least with respect to existing contracts, one could argue that contracts are not null and void from the outset according to Sec 879 or impossible according to Sec 878 ABGB, but that it is always important whether their fulfilment endangers the purpose of the sanctions. However, there is no relevant case law in Austria on this subject.
- A further provision which refers to the fulfilment of civil law claims can be found in § 5 SanktG. Accordingly, in connection with civil law claims pursuant to the aforementioned Sec 2 para 2 no 6 of the SanktG, it rests with the person asserting the civil claim to submit evidence that the compliance with a contract or other legal transaction was not affected by the sanction.
- Additionally, a person fulfilling a civil claim, although not required to do so pursuant to Sec 2 para 2 no 6, cannot derive third party claims from it, unless the person complied involuntarily or neither knew nor had to know that the claim was not to be complied with pursuant to Sec 2 para 2 no 6.
- Like in Art 6 of EU Regulation no 881/2002, there exists a similar provision in the SanktG. Damages for the delay of or non-compliance with a contract or other legal transaction cannot be claimed if such delay or non-compliance is based on a negligent lack of knowledge that a person or entity is not affected by a legal act pursuant to Sec 2 of the SanktG.

5.2 Please provide information for how to obtain relevant economic sanctions laws, regulations, administrative actions, and guidance from the Internet. Are the materials publicly available in English?

The Legal Information System of the Republic of Austria (*Rechtsinformationssystem* – “RIS”), which can be accessed online at www.ris.bka.gv.at, serves to publish the federal law and the law of the provinces. It also serves to provide information on federal and state law and provides access to EU law, case law, etc.

Some Austrian laws have also been translated into English and can be accessed in the RIS like the SanktG. However, these translated laws are not always up to date – this is also the case with the SanktG. Furthermore, it should be noted that only the German version is the authentic and thus binding version.

One can enquire about current law projects and draft laws as well as about relevant appraisal procedures on the homepage of the Austrian parliament at www.parlament.gv.at. Here, you can also find explanatory materials on the laws and the decrees of the National Council (see also question 2.10).

See also question 2.6. The OeNB also publishes interpretations and practical information.



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