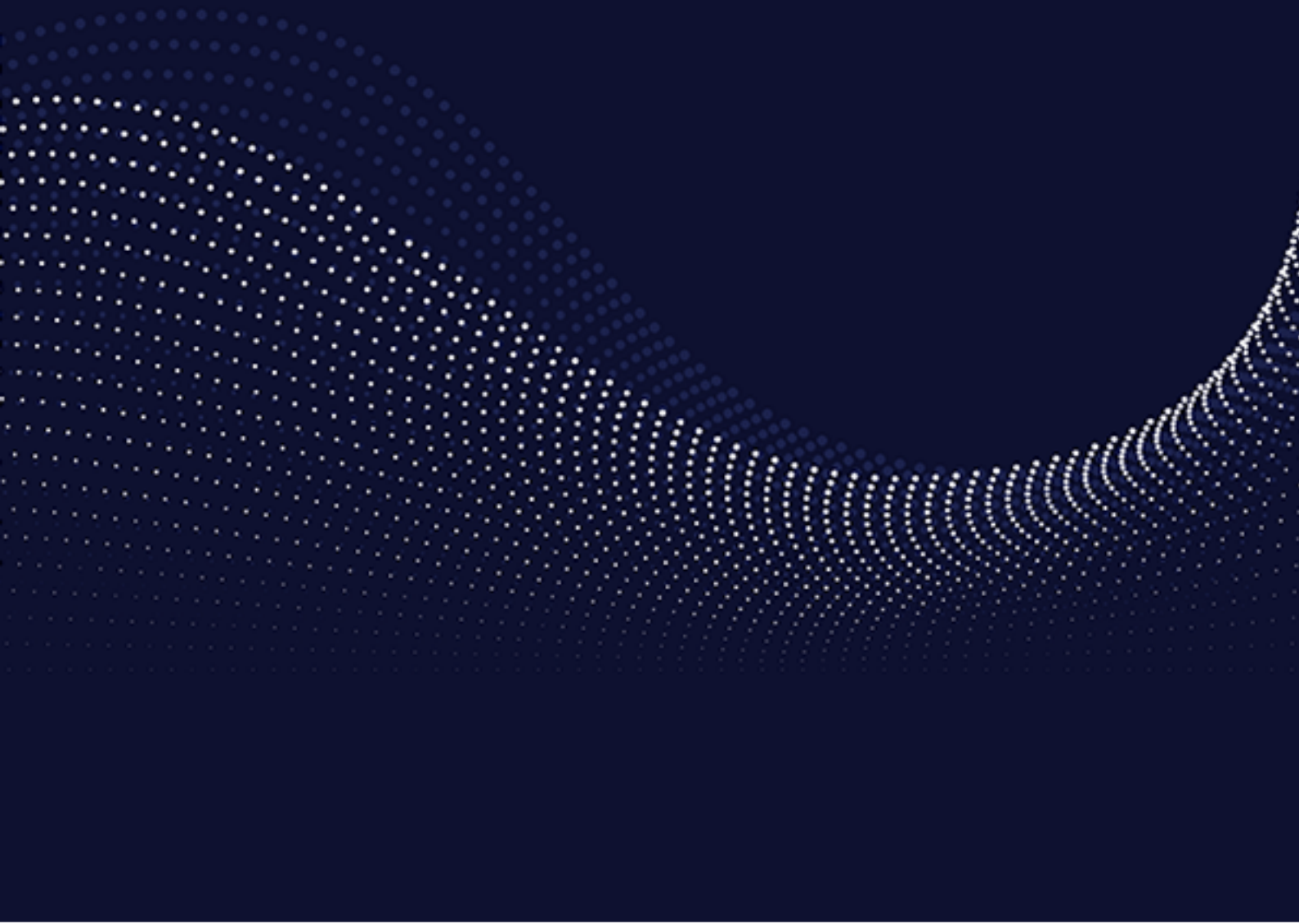
LEXOLOGY
Getting The Deal Through

# SANCTIONS

## Netherlands



# Sanctions

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## Sanctions

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## Netherlands

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## GENERAL FRAMEWORK

### Legislation
What domestic legislation enables economic, financial and trade sanctions to be implemented in your jurisdiction?

The European Union always adopts international sanctions that have been adopted by the United Nations Security Council. In addition, the European Union may impose sanctions on its own initiative based on its Common Foreign and Security Policy. As a UN and EU member state, the Netherlands has an obligation to properly implement applicable sanctions regimes adopted by these international organisations. The Netherlands prefers not to unilaterally impose sanctions.

EU regulations apply directly in the Netherlands and, as such, do not have to be implemented into national law. EU decisions – for example, those concerning arms embargoes – will be implemented into national law through sanctions regulations. Breach of international sanctions has been criminalised in the applicable sanctions regulation. The legal basis for this is provided by the Sanctions Act 1977.

### Autonomous versus international regimes
Does the domestic legislation empower your government to implement an autonomous sanctions regime or are only those sanctions adopted by international institutions and organisations imposed?

Although the Netherlands prefers not to unilaterally impose sanctions, domestic legislation empowers the Dutch government to implement autonomous sanctions regimes.

### Types of sanction imposed
What types of sanction are imposed in your jurisdiction?

As the Netherlands implements both UN and EU sanctions, any types of restrictive measures imposed by these international organisations on persons and entities may apply, including economic and sectoral sanctions, financial sanctions, trade and investment restrictions, arms embargoes, and travel bans.

### Countries subject to sanctions
Which countries are currently the subject of sanctions or embargoes in your jurisdiction?

The Dutch list of sanctions regulations concerning countries and entities currently subject to restrictive measures is published online. This list generally conforms to applicable EU sanctions as presented on the EU Sanctions Map.

## Non-country specific regimes

### What other sanctions regimes are currently in force in your jurisdiction which are not country specific?

As far as non-country specific sanctions regimes are concerned, the Netherlands applies a number of EU restrictive measures, notably the restrictive measures against:

- al-Qaeda and ISIL (Regulation (EU) 2016/1686 and Regulation (EU) No. 881/2002, as amended);
- conflict diamonds (Regulation (EC) No. 2368/2002, as amended);
- terrorism (Regulation (EU) 2021/138, as amended);
- the proliferation and use of chemical weapons (Regulation (EU) 2018/1542);
- cyberattacks threatening the European Union or its member states (Regulation (EU) 2019/796); and
- serious human rights violations and abuses (Regulation (EU) 2020/1998, as amended).

## Counter-terrorism sanctions

### What sanctions and prohibitions are imposed in your jurisdiction in relation to terrorist activities?

Applicable sanctions in the Netherlands in relation to terrorist activities are mainly based on those set forth by the European Union; Regulation (EC) No. 2580/2001 enabling the designation of persons and entities involved in terrorist activities applies. The designation entails an asset freeze, and a prohibition against making funds and economic resources available. At the EU level, the designations are reviewed at regular intervals (at least every six months) to ensure that there are sufficient grounds to maintain designated persons' and entities' presences on the list. The European Union publishes and regularly updates a consolidated list of persons, groups and entities – including those involved in terrorist activities – subject to EU financial sanctions as a result of the various sanctions regulations adopted under the Common Foreign and Security Policy.

Furthermore, Regulation (EU) 2016/1686 imposes additional restrictive measures on al-Qaeda and ISIL, as well as natural and legal persons, entities and bodies associated with them. The restrictive measures include prohibitions on arms exports, asset freezes, making funds available, and satisfying claims and restrictions on admission. The EU Sanctions Map offers the option to check personal and territorial restrictions – other than financial sanctions – applicable to persons and entities, including those involved in terrorist activities listed in the annexes to the sanctions regulations.

The Netherlands maintains a National Sanction List on Terrorism, which lists Dutch persons involved in terrorist activities who are subject to an asset freeze.

## Anti-boycott laws

### Are any blocking or anti-boycott laws in place in your jurisdiction?

Regulation (EC) No. 2271/96 (the Blocking Statute) applies, which protects EU operators from the extraterritorial application of third-country laws. The Blocking Statute is an EU response to extraterritorial restrictive measures that the United States took in relation to Cuba, Iran and Libya, and targets the effects of certain US extraterritorial legislation specified in its Annex. The Annex currently lists US measures concerning Cuba and Iran. The present relevance of the Blocking Statute for EU operators mainly lies in its application to US extraterritorial measures directed at Iran.

The Blocking Statute protects EU operators, regardless of their size and field of activity, by:

- nullifying the effect in the European Union of any foreign court ruling based on the foreign laws listed in its Annex; and
- allowing EU operators to recover court damages caused by the extraterritorial application of the specified foreign laws.

The Blocking Statute prohibits compliance by EU operators with any requirement or prohibition based on the specified foreign laws. EU operators whose economic and financial interests are affected by the extraterritorial application of such laws are under the obligation to inform the European Commission. If EU operators consider that non-compliance with a requirement or prohibition based on the specified foreign laws would seriously damage their interests or the interests of the European Union, they can apply to the European Commission for an authorisation to comply with those laws.

Violations of the Blocking Statute are enforced in the Netherlands through the Anti-Boycott Regulation Act 1998 and the Economic Offences Act 1950.

## Scope of application

### Who must comply with sanctions imposed in your jurisdiction? Do sanctions have extra-territorial effect?

Compliance requirements for sanctions in the Netherlands are basically those of the European Union with respect to sanctions. The following persons and entities must comply with EU sanctions:

- any entity incorporated in an EU member state, and its EU and non-EU branches;
- any entity incorporated outside the European Union in respect of business conducted in the European Union;
- anyone (any director, officer, employee, agent, etc) located within the European Union, irrespective of nationality;
- anyone (any director, officer, employee, agent, etc) who is a national of an EU member state, even if outside the European Union; and
- anyone on board any aircraft or vessel under the jurisdiction of an EU member state.

## Competent sanctions authorities

### Which government authorities in your jurisdiction are responsible for implementing and administering sanctions?

Principal responsibility for implementation and administration rests with the Central Service for Import and Export (CDIU), which is available for consultation, and processes licences and authorisations. The CDIU is part of Dutch Customs, which supervises the import and export of goods and services from and to countries subject to sanctions. The CDIU may escalate complex sanctions issues to the Ministry of Foreign Affairs, which is ultimately responsible for the issuance of licences and authorisations as well as the implementation of sanctions policy in the Netherlands.

First-line responsibility for the investigation of breaches lies with Team Precursors, Strategic Goods and Sanctions, which may conduct audits and start inquiries into suspected violations of sanction regulations.

The Dutch Central Bank (DNB) and the Authority for the Financial Markets (AFM) supervise financial transactions and compliance with financial sanctions.

The Inspectorate for Environment and Transport supervises sanctions in relation to shipping and aviation.

The distribution of competences with regard to the implementation and administration of sanctions in the Netherlands is somewhat haphazard. It is recommended to seek prior local advice about which institution to contact in each particular situation.

## Business compliance

### Are businesses in your jurisdiction required to put in place any systems or controls in order to ensure compliance with sanctions?

Contrary to certain requirements in this respect regarding export controls, the competent Dutch authorities have not imposed any national general requirements on businesses to have in place any systems or controls to ensure sanctions compliance. Having an internal compliance programme for sanctions in place, however, may facilitate the issuance of authorisations where applicable. Specific requirements for systems, controls or reporting may also be imposed as part of authorisation conditions.

However, the DNB and the AFM have specific requirements to ensure compliance with financial sanctions. This concerns the (financial) institutions referred to in article 10(2) of the Sanctions Act 1977. The specific requirements for administrative organisation and internal controls applicable to these institutions have been elaborated in the Regulation on Supervision to the Sanctions Act 1977, including requirements incorporate the duty to notify in the case of a sanctions hit. The DNB has published an overview of the Sanctions Act 1997, guidance on the division of responsibilities and key information about the Regulation on Supervision to the Sanctions Act 1997 on its website.

Persons and entities that have been designated pursuant to Regulation (EU) No. 269/2014 have a general notification duty. Based on Regulation (EU) 2022/1273 amending Regulation (EU) No. 269/2014, such persons and entities are required to report their assets located in EU member states within six weeks of the official publication of their designation. The reporting form to be used for this purpose for assets located in the Netherlands is made available on the Dutch government's website. The completed reporting form must be sent

to the competent authority in the Netherlands depending on the nature of the assets (funds, real estate, non-stock listed companies, art and cultural objects, ships, aircraft). The government's website also lists the email addresses of the applicable competent Dutch authorities.

### Guidance
### Has your government issued any guidance on compliance with the sanctions framework in your jurisdiction?

The Dutch government and applicable authorities have issued extensive guidance on sanctions and sanctions compliance, including, among others:

- general guidance on:
    - the Dutch policy regarding international sanctions issued by the government;
    - export controls and strategic goods issued by the government, including the tightening of Dutch restrictions regarding Turkey;
    - the sanctions imposed on Russia and Belarus for businesses, which is regularly updated by the government; and
    - the sanctions imposed on Russia issued by the DNB;
- the Manual on Strategic Goods and Services issued by the Ministry of Foreign Affairs, which also contains information on sanctions policy;
- the Manual on Iran Sanctions issued by the Ministry of Foreign Affairs;
- the Ministry of Foreign Affairs fact sheets on doing business with Iran and on anti-torture restrictions;
- extensive guidance issued by the Ministry of Finance on how to deal with financial sanctions;
- guidance on financial sanctions issued by the DNB; and
- guidance specifically for financial institutions on the sanctions imposed on Russia issued by the AFM.

## ECONOMIC AND FINANCIAL SANCTIONS

### Asset freezes
### In what circumstances may a person become subject to asset freeze provisions in your jurisdiction? What dealings do asset freeze provisions generally restrict in your jurisdiction?

An asset freeze is a targeted sanction imposed by an EU regulation (frequently based on a resolution of the United Nations Security Council) against individuals and entities that are part of, or affiliated with, the governments of non-EU countries deemed to be responsible for serious violations of human rights, or whose activities seriously undermine democracy or the

rule of law in the applicable country. Asset freezes are designed to prevent such individuals and entities from financing their pernicious activities.

The Netherlands can also impose asset freezes as a specific restrictive measure against persons and entities within the framework of the fight against terrorism and terrorism financing. With the exception of the persons designated on the National Sanction List on Terrorism, the Netherlands has not unilaterally imposed asset freezes or sanctions. All asset freezes that businesses in the Netherlands should be aware of are based on EU regulations.

Asset freezes are the most common form of financial sanction and usually consist of two components:

- the obligation to freeze the assets and funds of the designated persons or entities; and
- a prohibition against making available, directly or indirectly, funds or economic resources for the benefit of designated individuals or entities.

Asset freezing prevents any transfer, alteration or use of the funds and assets and, as such, effectively excludes any business dealings with designated persons or entities.

## General carve-outs and exemptions

### Are there any general carve-outs or exemptions to the asset freeze provisions in your jurisdiction?

The competent authorities in EU member states (in the Netherlands, primarily the Ministry of Finance, the Ministry of Foreign Affairs, and the Ministry of Economic Affairs and Climate) may authorise the release of certain frozen funds or economic resources, or the making available of certain funds or economic resources, as they deem appropriate if the situation concerned complies with one or more of the derogations to the asset freeze provided for in the applicable EU regulation.

Such derogations usually include the satisfaction of basic needs (eg, foodstuffs, rent, medicines or medical treatment) for listed individuals and their family members, the payment of expenses associated with the provision of legal services, or when the assets are necessary for extraordinary expenses or for humanitarian purposes.

In a November 2022 budgetary letter to the Dutch Parliament, the Ministry of Foreign Affairs noted that the usual derogations from the asset freezes provided for in the applicable EU regulations can be inadequate given the length of the duration of the sanctions, especially where indirectly affected companies are concerned. In this regard, the Ministry of Foreign Affairs stated that it had realised the necessity to investigate the possibility of placing the management of certain frozen assets belonging to legal persons designated in the Netherlands under (judicial) supervision.

## List of targeted individuals and entities

### Do the competent sanctions authorities in your jurisdiction maintain a list of individuals and entities blocked under asset freeze restrictions?

The only country-specific list in this regard is the National Sanction List on Terrorism. For all other persons and entities subject to asset freeze restrictions, the competent Dutch authorities will usually refer to the consolidated list of persons, groups and entities subject to EU financial sanctions.

### Other restrictions

What other restrictions apply under the economic and financial sanctions regime in your jurisdiction?

Other restrictions that apply in the Netherlands are restrictions imposed by the European Union. Apart from asset freezes, the European Union has also imposed bans on investments in, loans to or insurance for certain sectors (eg, granting loans for the installation of new power plants for electricity production in Syria) and a prohibition against financing the import or export of specific goods.

The bans on investments, loans and insurance services all relate to North Korea, Syria, Russia, Ukraine (Crimea, Sevastopol and areas not controlled by the Ukrainian government), and Belarus, and can be verified on the EU Sanctions Map. The prohibition against financing the import or export of certain goods is, in principle, an ancillary measure to the existing trade restrictions for the countries concerned.

### Exemption licensing – scope

Are the competent sanctions authorities in your jurisdiction empowered to issue a licence to permit activities which would otherwise violate economic and financial sanctions? If so, what is the extent of their licensing powers and in what circumstances will they issue a licence?

Under EU regulations, the national authorities of EU member states are competent to issue authorisations to allow activities that are in principle prohibited under the applicable sanctions regime, insofar as such a regime provides for the possibility to derogate from its restrictions.

In the Netherlands, the competent authority with respect to authorisations and exemptions concerning economic and financial sanctions is, in principle, the Ministry of Finance.

### Exemption licensing – application process

What is the application process for an exemption licence? What is the typical timeline for a licence to be granted?

Generally, applications for exemptions and authorisations will have to be made through letters and will need to be documented to the extent possible. The competent authority will test the application against the requirements for exemption or authorisation under the applicable EU sanctions regime.

Dutch administrative law provides that the competent authority is required to decide on the application within eight weeks of filing. If this is not possible, the authority will need to inform

the applicant, stating the reasons for the delay and indicating when the decision may be expected. It is not uncommon for the Dutch authorities to process applications (much) faster than this, especially when the applicant has explained that the matter is urgent. Complex applications usually take more time to process.

### Approaching the authorities

To what extent is it possible to engage with the competent sanctions authorities to discuss licence applications or queries on economic and financial sanctions compliance?

The applicable legislation generally does not provide for any formal interaction or discussion process with the competent authorities. However, it is advisable and common practice to contact the competent authorities at an early stage (even before submitting an application) to provide all relevant information on the prospective transaction and receive feedback from the authorities on any eventual practical requirements that they may have. This will generally facilitate the efficient processing of the application and prevent unnecessary delays.

As a rule, the Dutch authorities are responsive and cooperative, although occasional delays may occur due to the high workload of the authorities under particular sanction regimes (for example, with respect to European Union–Russia sanctions).

In principle, the sanctions team within the Financial Market Directorate of the Ministry of Finance is competent with respect to licence applications and queries concerning financial sanctions. The best way to establish initial contact with this team is to email sancties@minfin.nl.

### Reporting requirements

What reporting requirements apply to businesses who hold assets frozen under sanctions?

The Dutch National Bank (DNB) and Authority for the Financial Markets (AFM) are the supervisory authorities responsible for compliance with financial sanctions. Businesses (primarily financial institutions) are under an obligation to notify the authority to which they have been linked on the basis of article 10 of the Sanctions Act 1977. The notification duty is triggered if a business relation is with a natural person or entity that is designated by the applicable financial sanctions.

Most financial institutions – including exchange offices, trust offices (corporate service providers) and insurance companies – need to report to the DNB. Investment service providers, investment institutions and undertakings for collective investment must report to the AFM.

## TRADE SANCTIONS

### General restrictions

## What restrictions apply in relation to the trade of goods, technology and services?

As the European Union is competent for setting out trade policy with non-EU countries, trade restrictions are mainly governed by EU law (ie, through directly applicable regulations that do not require any further implementation by EU member states). The individual member states are primarily responsible for the implementation and enforcement of such regulations. Most trade restrictions implement export controls on items agreed in accordance with international frameworks to which the European Union (or its member states) are a party (eg, the Wassenaar Arrangement, the Australia Group, the Nuclear Suppliers Group and the Missile Technology Control Regime).

To provide a general overview, we have listed the main EU trade restrictions – that is, not the trade restrictions that flow from typical sanctions regulations imposed on certain jurisdictions such as, for example, Regulation (EU) No. 833/2014, which somewhat confusingly also contains export and import restrictions.

### Domestic implementation

The EU framework for restrictions on the trade of goods and technology and the provision of services was implemented and elaborated in the Netherlands through the Strategic Services Act 2011 and its Implementing Regulation, and the Strategic Goods Decree 2008 and its Implementing Regulation.

### Dual-use items

Regulation (EU) 2021/821 (the Dual-Use Regulation) provides the backbone of the EU regime for the control of exports, transfer, brokering and transit of dual-use items.

Dual-use items are goods, software and technology that can have both civilian and military applications. The European Union controls the export, transit and brokering of such items by imposing authorisation and notification requirements.

A good, software or technology can be qualified as a dual-use item under one of the following categories:

- goods, software or technology that:
    - are listed in Annex I to the Dual-Use Regulation;
    - are not listed in Annex I (unlisted items) but can be used in connection with nuclear, biological or chemical weapons and related missile technology; for military end-use in a country under embargo; or for use as parts of military items listed on the national military list of an EU member state that have been exported from the territory of an EU member state in violation of authorisation requirements (this catch-all clause allows the authorities of a member state to control the export of an unlisted item if they suspect this item may be intended for one of the above uses; or
    - are not listed in Annex I and do not fall under the catch-all clause may still be subject to export restrictions if they are determined by a member state to pose risks in terms of public security or human rights violations; or
-

cyber-surveillance items, which are dual-use items specially designed to enable the covert surveillance of natural persons by monitoring, extracting, collecting or analysing data from information and telecommunication systems.

Dual-use items may be traded freely within the European Union, except for some particularly sensitive items. However, subject to an authorisation or notification requirement are, in principle:

- all exports (including re-exports) outside of the European Union;
- brokering services provided by a broker established in the European Union concerning the sale or purchase of dual-use items in a third country for transfer to another third country; and
- the transit of dual-use items.

Prior to an envisioned transaction, exporters, brokers or transferors who intend to make a controlled transaction must apply for a government-issued authorisation. The authorities of the EU member state where such entities are established are responsible for applying and enforcing dual-use controls. In the Netherlands, the principal licensing authority is the Central Service for Import and Export (CDIU).

The current Dual-Use Regulation is a recast of Regulation (EC) No. 428/2009, whereby a number of provisions of the latter were amended to extend controls and enhance efficiency. This included, among others:

- updated definitions and control parameters;
- harmonisation, simplification and digitalisation of licensing; and
- enhanced information-sharing and cooperation with third countries.

The current Dual-Use Regulation introduces a basis for EU autonomous controls (ie, controls that go beyond what is agreed within multilateral frameworks such as the Wassenaar Arrangement) specifically allowing the European Union to make its own decisions regarding human rights controls on cyber-surveillance technologies and the coordination of national controls on emerging technologies. At the same time, it provides export facilitations, including new Union General Export Authorisations (UGEAs).

Capital punishment and torture

Regulation (EU) 2019/125 prohibits exports and imports of goods that have no practical use other than capital punishment or torture as well as other forms of cruel, inhumane or degrading treatment or punishment listed in Annex II of the Regulation. It also imposes an authorisation requirement on goods that could potentially be used for such purposes, as listed in Annexes III and IV of the Regulation.

The Regulation also regulates the trade of certain pharmaceutical chemicals that could be used for lethal injection executions without limiting the trade of such chemicals for legitimate purposes.

Firearms

Regulation (EU) No. 258/2012 implements article 10 of the United Nations Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition (supplementing the UN Convention Against Transnational Organized Crime). It also establishes export authorisation as well as import and transit measures for firearms, their parts and components, and their ammunition.

This Regulation lays down the authorisation requirements and the principles of the authorisation procedure for the export of firearms and their parts, essential components and ammunition listed in Annex I to the Regulation.

## General exemptions

### Do any exemptions apply to the general trade restrictions?

Each regulation provides for specific exemptions or transactions that remain out of scope of the restrictions of the regulation concerned (eg, the Dual-Use Regulation does not apply to the supply of services or the transmission of technology if such supply or transmission involves the cross-border movement of persons).

## Targeted restrictions

### Have the authorities in your jurisdiction imposed any trade sanctions against dealing with any particular individuals or entities?

Apart from the trade restrictions based on EU sanctions regulations, the Netherlands presently has not unilaterally imposed any trade restrictions.

However, in the wake of the United States–Netherlands–Japan Semiconductor Export Controls Deal, the Dutch Minister for Foreign Trade and Development Cooperation informed the Dutch Parliament in a letter dated 8 March 2023 about the national additional export control measures under preparation in the field of advanced production equipment for semiconductors.

The letter states that, given the technological developments and geopolitical context, the Cabinet has concluded that it is necessary for international security to expand the existing export controls for specific semiconductor production equipment. To this end, the Cabinet will submit proposals under a multilateral framework that is aimed at having these high-value technologies controlled internationally. At the same time, the Cabinet will the necessary steps nationally and in the EU context.

The enactment of additional national export control measures concerns very specific technologies in the semiconductor production cycle in which the Netherlands has a unique and leading position, such as extreme ultraviolet and the most advanced deep ultraviolet immersion lithography and deposition. These technologies, in combination with certain other advanced technologies made elsewhere, play a crucial role in the production of advanced semiconductors. The final choice of additional control measures was made carefully and as precisely as possible to avoid any unnecessary disruption to value chains and to take into account the international playing field.

Because the Netherlands considers it necessary on national and international security grounds for this technology to be brought under control as soon as possible, the government will, parallel with and complementary to the multilateral route, also establish a national control list through a public ministerial regulation.

The United States–Netherlands–Japan Semiconductor Export Controls Deal (which has not been made public as at April 2023), in the wake of which the new national Dutch control measures have been announced, seeks to curb Chinese artificial intelligence and supercomputing capacity for military end use, and the development of weapons of mass destruction.

### Exemption licensing – scope

**In what circumstances may the competent sanctions authorities in your jurisdiction issue a licence to trade in goods, technology and products that are subject to restrictions?**

Authorisation conditions differ depending on applicable regulations and required authorisations. Certain restrictions are, however, absolute and do not provide for the possibility to obtain an authorisation. The competent authorities will always consider:

- the final customer;
- the political situation in the destination country;
- the end use of the product; and
- the potential for misuse of the product.

The competent authorities can issue three different types of authorisations for the export and transfer of dual-use goods. These three types are:

- UGEAs or national general export authorisations (NGEAs);
- global export authorisations; and
- individual export authorisations.

UGEAs and NGEAs

UGEAs allow exports of most dual-use items listed in Annex I of the Dual-Use Regulation to specific destinations if certain conditions are met under Annex II. Currently, there are eight UGEAs in place regarding, among others:

- export of dual-use items listed in Annex I (excluding Annex IIg items) to Australia, Canada, Iceland, Japan, Liechtenstein, New Zealand, Norway, Switzerland, the United Kingdom and the United States (EU001);
- export of certain specific dual-use items to Argentina, South Africa, South Korea and Turkey (EU002);
- export of most dual-use items listed in Annex I after repair, or for replacement, to 21 non-EU jurisdictions (EU003);
- temporary exports for exhibitions in fairs to 21 non-EU jurisdictions (EU004);

- exports of certain telecommunications items to Argentina, China (including Hong Kong and Macau), India, South Africa, South Korea, Turkey and Ukraine (EU005);
- exports of certain chemicals to Argentina, South Korea, Turkey and Ukraine (EU006);
- intra-group exports of software and technology to 16 non-EU jurisdictions (EU007); and
- certain encryption items (EU008) – destinations for this licence exclude:
    - all destinations listed in EU001;
    - the 42 non-EU jurisdictions listed in EU008; and
    - any destination other than those referred to in EU008 that is subject to an arms embargo or restrictive EU measures applicable to dual-use items.

The Netherlands has issued a number of NGEAs, which generally may be obtained through registration (no regular application is required). These are:

- export of certain dual-use items in categories 1, 2, 3 and 4 of Annex I of the Dual-Use Regulation to all destinations except Afghanistan, Iraq, Iran, Libya, Lebanon, Myanmar, North Korea, Pakistan, Sudan, Somalia and Syria (NL002);
- transfer of certain categories of goods on the EU Common List of Military Goods:
    - subject to the fulfilment of certain conditions (NL004);
    - for the purpose of demonstration, evaluation or exhibition (NL005); and
    - for the purpose of repair, maintenance or revision (NL006);
- transit of certain categories of goods on the EU Common List of Military Goods:
    - originating from certain jurisdictions and not destined for certain other jurisdictions (NL007); and
    - to certain destinations (NL008);
- transit, export and transfer concerning agreements within the framework of the F-35 Lightning II programme (NL009); and
- export of information security items (encryption) with the exception of jurisdictions subject to an arms embargo pursuant to the definition thereof in the Dual-Use Regulation and 36 jurisdictions as listed in the NGEA (NL010).

Global export authorisations

A global export authorisation may be obtained for regular, less sensitive exports of specific dual-use items to civilian users in specific jurisdictions. It will usually be issued with a duration of one year and may be used for exports to different consignees in one or more jurisdictions (unless provided differently in the licence terms). For the export of certain dual-use items, global export authorisations can only be obtained if the exporter has an internal compliance programme for sanctions in place that has been approved by the licensing authority (ie, the CDIU).

Individual export authorisations

An individual export authorisation can be granted for single exports or more sensitive exports of a particular dual-use item. It should always be obtained for exports of products or technologies under the catch-all provision of the Dual-Use Regulation. Applications for individual export licences in the Netherlands are generally required to include up-to-date end use statements.

## Exemption licensing – application process

### What is the application process for a licence? What is the typical timeline for a licence to be granted?

The most common way to apply for authorisations and exemptions under applicable trade sanctions is by sending a letter to the competent authority (either by post or email), which is to be substantiated as much as possible by relevant documentation. There are generally no formal requirements for these kinds of applications, although it is sometimes possible to use the most common form for export licence applications. It is nevertheless good practice to be in touch with the competent authorities to align on any requirements prior to filing an application.

Applications for export authorisations under applicable export control restrictions are more formalised. The necessary forms can be submitted to the CDIU either by post or through the Company Message Box, which companies can use to communicate with governmental institutions and bodies. The most commonly used form for export authorisations is the Application for Authorisation to Export or Transit Strategic Goods or Sanctioned Goods- , which provides for the possibility to opt for either a global or an individual export authorisation.

Applications for UNGEAs and NGEAs can generally also be made through specific forms that can be submitted by post or through the Company Message Box. The completion of these forms tends to be more of a registration than an application process.

Dutch administrative law provides that the competent authority is required to decide on the application within eight weeks of filing. If this is not possible, the authority will need to inform the applicant, stating the reasons for the delay and indicating when the decision may be expected. It is not uncommon for the Dutch authorities to process applications (much) faster than this, especially when the applicant has explained that the matter is urgent. Complex applications usually take more time to process, especially if they need to be escalated to the Ministry of Foreign Affairs for a decision. The processing of applications for UGEAs and NGEAs usually does not take more than a few weeks.

## Approaching the authorities

### To what extent is it possible to engage with the competent sanctions authorities to discuss licence applications or queries on trade sanctions compliance?

The applicable legislation generally does not provide for any formal interaction or discussion process with the competent authorities. However, it is advisable and common practice to

contact the competent authorities at an early stage (even before submitting an application) to provide all relevant information on the prospective transaction and receive feedback from the authorities on any eventual practical requirements that they may have. This will generally facilitate the efficient processing of the application and prevent unnecessary delays.

As a rule, the Dutch authorities are responsive and cooperative, although occasional delays may occur due to the high workload of the authorities under particular sanction regimes (for example, with respect to European Union–Russia sanctions).

## ENFORCEMENT AND PENALTIES

### Reporting violations

Is there a requirement to report violations to the authorities (either to self-report or to report others)? If reporting is not obligatory, is it encouraged in any event?

There is no general legal obligation in the Netherlands to report a breach of trade restrictions (ie, neither to self-report nor to report others). EU restrictive measures also do not include such an obligation. During an ongoing investigation without potential criminal law implications, however, all parties involved in the transactions are required to provide all relevant information and documentation if requested by the investigating authority.

If an economic operator should have reason to believe that a breach of sanctions regulations has occurred, a self-disclosure prior to an intervention by the authorities can, in principle, lead to the waiving or a mitigation of penalties. The possible mitigative effect of a self-disclosure is usually a point of consideration when economic operators become aware that a breach may have occurred.

### Investigations

Which authorities are responsible for investigating sanctions violations? What is the extent of their investigatory powers?

First-line responsibility for the investigation of breaches lies with Team Precursors, Strategic Goods and Sanctions (Team POSS), which may conduct audits and start inquiries into suspected violations of sanction regulations.

Team POSS is part of Dutch Customs and, as such, part of the Dutch internal revenue service. If Team POSS suspects an intentional violation or deems that a penalty should be imposed, it will prepare a formal police report that it will submit to the Public Prosecution Service. The Public Prosecution Service will decide whether it will start prosecution in court or offer a settlement. However, Team POSS has discretion to abstain from handing over the file to the Public Prosecution Service and offer a settlement or issue a cautionary letter.

As in many other jurisdictions, the intelligence services are also tasked with detecting egregious sanctions violations, especially if they involve particularly sensitive goods and technology or international security, or both. Information obtained by the intelligence services may serve as a basis for a Team POSS inquiry or for initiating court proceedings by the Public Prosecution Service, or both.

## Penalties

### What are the potential penalties for violation of sanctions?

A violation of a sanctions regulation constitutes a breach of article 2 of the Sanctions Act 1977 and, in turn, is punishable as an 'economic offence' pursuant to article 1(1) of the Economic Offences Act 1950.

An economic offence that is committed with wilful intent is a crime. If no wilful intent is involved in the act, the economic offence is a misdemeanour. Pursuant to article 6 of the Economic Offences Act 1950, each economic offence resulting from a breach of a sanctions regulation shall be punished:

- in the case of a crime, by imprisonment for a maximum term of six years, community service or a fine of the fifth category (ie, a maximum fine of €90,000); or
- in the case of a misdemeanour, by imprisonment for a maximum term of one year, community service or a fine of the fourth category (ie, a maximum fine of €22,500).

Article 6 of the Economic Offences Act 1950 also provides that a fine of the category above may be imposed if the value of the goods by means of which, or in relation to which, the economic offence was committed or that was obtained through the economic offence is higher than one-quarter of the maximum (applicable) fine that can be imposed.

Dutch enforcement practice with regard to the violation of sanctions and export control regulations generally shows that legal entities involved in such violations will be held to account or prosecuted, or both, by the competent authorities. If there are indications that the violations involve wilful intent (the definition of which includes the omission of acting when required), the authorities may also prosecute in person those involved in committing or actually directing such violations.

In addition, if repeated offences based on the same set of factual circumstances have been committed, the competent authorities in the Netherlands may take this into account when deciding on the total amount of the penalty to be imposed. However, the authorities are not required to accumulate the fines of the separate punishable offences and they will normally only do so in egregious cases.

## Recent enforcement actions

### Have there been any significant recent enforcement cases? What lessons can be learned from these cases?

On the whole sanctions, enforcement cases are not numerous in the Netherlands. Perhaps the most important lesson to be learned is that there is a low threshold for proving wilful intent to establish the criminal liability of the perpetrator in court proceedings.

The Dutch court will assess the applicability of ***kleurloos opzet***. Contrary to culpable intent, the concept of ***kleurloos opzet*** does not require it to be shown that the perpetrator intended to break the law. Intent is assumed to be present in the act of breaking the law. The applicability of the criterion of ***kleurloos opzet*** in sanctions enforcement cases was recently confirmed by the Dutch Supreme Court in Case No. 21/01463. Effectively, it means that, for a Dutch

court to establish criminal liability, the Public Prosecution Service will only need to show that there was a breach of the applicable sanctions regulation or regulations.

## UPDATE AND TRENDS

### Emerging trends and hot topics

Are there any emerging trends or hot topics in sanctions law and policy in your jurisdiction?

Such trends and topics are threefold.

First and foremost, national additional export control measures are under preparation in the field of advanced production equipment for semiconductors within the framework of the United States–Netherlands–Japan Semiconductor Export Controls Deal.

Second, there is a trend at the EU level towards focusing increasingly closely on specific areas of concern (eg, human rights violations, including combatting corruption and cyberattacks), which is resulting more and more often in targeted EU sanctions instead of country-related EU sanctions. Evidently, this trend will also affect sanctions law and practice in the Netherlands.

Third, it is to be expected that the new Regulation (EU) 2021/821 on dual-use items, which provides for extended controls and initiatives for enhanced efficiency, will require additional implementation measures to that effect in the Netherlands.