



POLICY PAPER

RECOMMENDATIONS TO STRENGTHEN THE IMPLEMENTATION OF SANCTIONS AGAINST RUSSIA IN THE CZECH REPUBLIC

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THE CZECH REPUBLIC'S RESPONSE TO RUSSIAN AGGRESSION IN UKRAINE

Russia's invasion of Ukraine on 24 February 2022 triggered an unprecedented response from parts of the international community, which focused on both helping the Ukrainians and sanctioning the Putin's regime. The Czech government did not stand idly by at this critical moment, but rather took a number of active steps to side with the victims of aggression. A strong gesture was the visit by Prime Minister Fiala, alongside representatives from Poland and Slovenia, to Kyiv while it was still under siege. The Czech Republic was also one of the first countries to send heavy weapons to the Ukrainians.¹

The Czech Republic then strengthened its position as one of the most active supporters of Ukraine by leading the widely-respected ammunition initiative announced in February 2024. It is also worth mentioning the significant assistance provided to refugees from Ukraine. In 2022, the Czech Republic provided temporary protection to approximately half a million Ukrainians. As of July 14, 2024, 364,528 Ukrainians are under Czech temporary protection.² The Czech Republic likewise increased its investment in security and defense, re-attaining in 2024 the two percent of GDP target after many years of being below that threshold.³ The Czech government also profiled itself within the EU as a country supporting tough sanctions against Russia. This paper offers recommendations on how to strengthen the implementation of sanctions through legislative and non-legislative measures.

EU AND CZECH SANCTIONS

Both the EU and the Czech Republic had already introduced restrictive measures against Russia in connection with its military aggression in Ukraine before February 2022. Since March 2014, the EU has imposed sanctions in response to the illegal annexation of Crimea and Sevastopol and the deliberate destabilization of Ukraine. Following the 2022 invasion, there has been a massive expansion of anti-Russia sanctions. Through 14 sanctions packages (introduced as early as 23 February 2022 and as recently as 24 June 2024), the EU has significantly expanded its sanctions list⁴ and has undertaken a wide range of measures to weaken Russia's economic base, deprive it of critical technologies and markets, and severely limit its ability to continue waging war. In addition, the EU sanctions on Belarus have been expanded in response to its involvement in the Russian aggression in Ukraine.

The Czech government's response included a modification of its domestic legislation. In addition to the amendment of Act No. 69/2006 Coll., on the Implementation of International Sanctions, and other related acts,⁵ the preparation of the Czech version of the so-called Magnitsky Act, a draft law

1 According to the statement of Czech Prime Minister P. Fiala, during the first year after the outbreak of the war the Czech Republic supplied Ukraine with a total of 89 tanks, 226 combat and armored vehicles, 38 howitzers, 6 anti-aircraft systems or 4 helicopters. Source Fiala odtajnil, kolik zbrani Česko dodalo Ukrajině, Filip Harzer, Seznam Zprávy, 22. 2. 2023, online: <https://www.seznamzpravy.cz/clanek/zahranicni-fiala-odtajnil-jake-zbrane-cesko-posla-lo-na-ukrajinu-226263>

2 Development of the number of persons granted temporary protection in connection with the war in Ukraine in the Czech Republic, Consortium of Migrants Assisting NNOs in the Czech Republic, July 14, 2024, online: <https://migracnikonsorciem.cz/cs/data-statistiky-a-analyzy/uprchlici-z-ukrajiny-v-datech/#uprchlici-cr-pocty>

3 Ministry of Defence & Armed Forces, Successful six months at the MoD: 2% GDP, modernisation, cooperation with the U.S., and efficient help to Ukraine, 27. 6. 2023, online: <https://www.army.cz/en/ministry-of-defence/newsroom/news/successful-six-months-at-the-mod:-2-gdp-modernisation-cooperation-with-the-u-s--and-efficient-help-to-ukraine-245605/>

4 EU Sanctions Map, online: <https://www.sanctionsmap.eu/#/main?search=%7B%22value%22:%22Russia%22,%22searchType%22:%7B%22id%22:1,%22title%22:%22regimes,%20persons,%20entities%22%7D%7D>

5 The Act was promulgated on 31 August 2022 in the Collection of Laws, volume 111, number 240/2022 Coll., on-line here: <https://www.psp.cz/sqw/historie.sqw?o=9&t=253>

restricting certain serious conduct in international relations (the Sanctions Act) was accelerated,⁶ and the first names were added to the national sanctions list. The Financial Analytical Office has in turn taken on a central role in coordinating the process of implementing international sanctions at the national level.

RECOMMENDATIONS

Strengthening the Government's Capacity to Implement International Sanctions

The Ministry of Foreign Affairs, as the central authority, receives initiatives for inclusion of entities on the national sanctions list since the sanctions law came into force on 1 January 2023 and maintains the list on its website.⁷ The first person that the Czech government sanctioned was Patriarch Kirill of Moscow on 26 April 2023. Later additions included the Russian businessman Vladimir Yevtushenko and his son Felix Yevtushenko on 29 June 2023, the husband and wife team of Rostislav and Olga Zorikov on 16 August 2023, and the Federal State Unitary “Enterprise for Administration of Assets Abroad” of the Chancellery of the President of the Russian Federation (Goszagransobstvennost) on 15 November 2023. The national sanctions list also originally included businessman Boris Obnosov, but he was removed from the list after being added to the EU sanctions list in the 12th package on 18 December 2023. Meanwhile, the most recent set of sanctioned entities was issued on 27 March 2024, which saw politician and businessman Viktor Medvedchuk, as well as politician, media producer and propagandist Artyom Marchevsky, and the Voice of Europe company all listed. These three entities were then listed by the EU on 27 May 2024.

It took approximately half a year after the sanctions law came into force for genuinely relevant names to start appearing on the national list, and for the Sanctions Department of the Ministry of Foreign Affairs to be even lightly staffed. In fact, by the summer of 2023, the team consisted of only one department head and three clerks. Despite the later positive developments in the process of adding individuals and entities to the national sanctions list, it is questionable whether it is actually happening in a timely manner. The goal is to be able to enact sanctions before entities associated with Putin's regime divest themselves of their assets, which is exactly what has been happening with some of those listed.⁸ The creation of evidence packs to support the inclusion of relevant entities on the national list must meet the strict legal standards of the EU sanctions regime. This is time-consuming analytical work that requires adequate staffing with a robust capacity. Following the example of other countries (UK – staff of over 150, Poland – staff of 30), there is a need to substantially increase the analytical capacity in the Czech Republic in order to properly and efficiently implement the sanctions law.

However, other institutions also need more staff members to enforce an effective sanctions policy – these include the Financial Analytical Office (FAU)'s Chief Sanctions Coordinator, the Ministry of

6 The Act was promulgated on 2 January 2023 in the Collection of Laws, Volume 1, Number 1/2023 Coll., on-line here: <https://www.psp.cz/sqw/historie.sqw?o=9&T=256>

7 National Sanctions List, Ministry of Foreign Affairs of the Czech Republic, on-line here: https://mzv.gov.cz/jnp/cz/zahranicni_vztahy/sankcni_politika/sankcni_seznam_cr/index.html

8 Zeřovi ruského zbrojaře hrozí sankce a vyhoštění. Rychle se zabývá firm v Česku, Anna Dohnalová, Aktuálně. cz, 3. 8. 2023, on-line here: <https://zpravy.aktualne.cz/domaci/zorikov-obnosov-cesko/r-0d9e7e34314411eeb1f50c-c47ab5f122/>

Industry and Trade's Foreign Investment Screening Department, and the relevant department of the National Organized Crime Agency of the Police of the Czech Republic (NCOZ).

Improving Information Tools for Mapping Ownership Structures

In order to effectively ascertain the influence of sanctioned entities, it is essential that the state has the necessary tools to enable public institutions to detect said influence. In the Czech Republic, beneficial ownership data is not reliable enough to be used for this purpose. The Register of Ultimate Beneficial Owners (UBO)⁹ is a public administration information system that is maintained by the courts of registry in electronic form, and ultimately managed by the Ministry of Justice. Despite the positive contribution of the UBO register, there are a number of problems with the reliability of the data contained therein. Additionally, the information system has underdeveloped functionality, and is thus underutilized. A number of these shortcomings were highlighted by the Ministry of Justice in its own analysis,¹⁰ and were also evident in independent analyses from the NGO sector.¹¹

There is a need for the Ministry of Justice to implement the measures proposed in these analyses that will lead to complete, accurate, and up-to-date beneficial owner data in the UBO register, and the development of useful functionality in the information system. Improvements to the UBO register will also need to be addressed by the government in the context of the recently approved EU-level AML package.¹²

Given the complexity of the chain of ownership structures of many companies behind which sanctioned entities hide, improvements to the UBO register alone are insufficient. The Czech Republic needs to expand the range of tools that will be able to detect the true owners in time to effectively implement sanctions, but also to minimize the risk of providing public money to non-transparent entities. Inspiration can be drawn from, for example, the ARACHNE system, an integrated IT tool for data mining and enrichment developed by the European Commission, which facilitates administrative and management controls for managing authorities in the area of structural funds and works externally, for example, with information from the Orbis database from the commercial supplier Bureau Van Dijk.

Approval of the Law Against 'Flow-Through' Accounts

Flow-through accounts, also known as transit accounts, are one of the tools used to conceal the origin of illegally acquired funds. These are used when funds are transferred from the countries of the former Soviet Union to the Czech Republic under the pretext of conducting business activities or

9 Czech Register of Ultimate Beneficial Owners: <https://esm.justice.cz/ias/issm/rejstrik>

10 Analysis of the Quality of Beneficial Ownership Records, 6. 3. 2024, the Ministry of Justice, on-line: <https://korupce.cz/partnerstvi-pro-otevrene-vladnuti-ogp/narodni-akcni-plany-nap/sesty-akcni-plan-2023-2024/faze-implementace/4-8-posileni-kvality-udaju-v-evidenci-skutecných-majitelu-analyza-a-navrh-opatreni/>

11 Reliability Analysis of Beneficial Owner Records, Datlab, 5. 12., 2022, on-line: <https://datlab.eu/blog/analyza-spolehlivosti-evidence-skutecných-majitelu/>

12 On 19 June 2024, new European regulations under the so-called AML package were published in the Official Journal of the EU: 1. Regulation (EU) 2024/1624 of the European Parliament and of the Council of 31 May 2024 on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing, 2. Directive (EU) 2024/1640 of the European Parliament and of the Council of 31 May 2024 on mechanisms to be put in place by Member States to prevent the use of the financial system for the purpose of money laundering or terrorist financing, amending Directive (EU) 2019/1937 and amending and repealing Directive (EU) 2015/849, 3. Regulation (EU) 2024/1620 of the European Parliament and of the Council of 31 May 2024 establishing an anti-money laundering and counter-terrorist financing authority and amending Regulations (EU) No 1093/2010, (EU) No 1094/2010 and (EU) No 1095/2010.

implementing foreign investment projects. The aim is to conceal the real origin of the money, which is then transferred to other countries. This process may be repeated, creating a complex conduit to anonymously move illicit funds.

A fundamental problem associated with flow-through accounts is the inability to prosecute the crime of money laundering without an evident predicate offense. Without proof that the money originated from an illegal act, law enforcement authorities are obliged to defer the case and release the seized funds even in cases of highly suspicious transactions.

Furthermore, Czech investigators often encounter passivity on the part of foreign authorities, who are not proactive in clarifying the source of the money and do not pursue the perpetrators. The Czech authorities are therefore in a situation where they cannot reliably document the predicate crime due to the lack of cooperation by the relevant authorities from the former Soviet Union countries. In these cases, there is no solution other than to postpone the prosecution and release the money.

The increasing stringency of Latvian regulations has caused a decrease in suspicious financial transactions in Latvia, and a corresponding increase in the Czech Republic. The Czech Republic should therefore respond with a similar legislative solution, which would substantially diminish the opportunity to launder the proceeds of crime.

On 23 August 2023, the Government instructed the Minister of Justice to prepare and submit a draft law regulating money laundering by 31 December 2024.¹³ This policy paper recommends that the preparation of the legislative proposal (which will also include the implementation of the EU confiscation directive)¹⁴ be accelerated to the extent possible and not wait until the end of this year. Limiting money laundering via flow-through accounts is crucial to combat Russian capabilities in the context of its aggression in Ukraine. In short, the longer the Czech Republic delays in drafting the law, the longer Russian money laundering will thrive here.

Approval of an Amendment to the Criminal Code to Strengthen the Punishment of Violations of International Sanctions

Recent data from the Ministry of Industry and Trade of the Czech Republic and a Czech National Bank investigation show that since the beginning of the Russian invasion of Ukraine, so-called gray exports (sending key goods – often utilized for warfare and its sustainment¹⁵ – to Russia via third countries) have increased by percentages in the hundreds. The total value of Czech exports to Turkey has risen from less than CZK 11 billion to an astonishing CZK 20 billion in the last two years, more than doubled in the case of Kazakhstan, and increased tenfold in the case of Kyrgyzstan. According to the Security Information Service, sanctions evasion in the Czech Republic is mostly committed by domestic companies, often backed by hidden Czech and foreign entities.

This showcases the need to strengthen the coordination of relevant authorities (including customs officials) and to strictly enforce international sanctions, including through changes to relevant

13 Government Resolution No 621 of 23. 08. 2023, ODok Portál, <https://www.odok.cz/portal/zvlady/usneseni/2023/621/>

14 EU Confiscation Directive (Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 23 November 2026), online: <https://eur-lex.europa.eu/legal-content/CS/TXT/?uri=CELEX:32024L1260>

15 In the context of the Russian invasion of Ukraine these include a wide range of previously civilian items, which are now essential for the Russian war effort, including a wide range of electronic components, precise machinery and relevant parts, ball bearings or mining equipment, for example.

legislation, such as amending the Criminal Code and the Criminal Procedure Code. On 24 April 2024, the EU Directive against violations of international sanctions was approved,¹⁶ and the Czech Republic is obliged to implement it by 20 May 2025. The Czech Republic will be expected to, among other things, criminalize violations of certain international sanctions committed through gross negligence and thus strengthen their enforceability. The already prepared transposing amendment proposal should also allow for the removal (confiscation) of the object of the international sanction. The Ministry of Justice addressed the comments on the draft amendment on 2 September 2024. There is a need to accelerate the legislative process of this proposal, which is expected to facilitate the enforcement of international sanctions.

Approval of a Legislative Proposal That Would Pave the Way for Confiscation of Specified Sanctioned Property

In the case of the aggression in Ukraine, there is no doubt that Russia is acting in violation of the mandatory prohibition on the use of force against the territorial integrity and political independence of Ukraine, thereby violating Article 2(4) of the UN Charter. For having violated international law, Russia is liable for the consequences of its attack and will be expected to offer compensation for the damage caused as a result of this violation.

Following the example of other European Union countries, particularly Estonia and Latvia, the Czech Republic should open a debate on the legislative treatment of the confiscation of designated sanctioned assets and their appropriation for the reconstruction of Ukraine. In January 2024, O. Kolář, M. Žantovský and V. Votápek drafted a general law to enable the confiscation of Russian property in the Czech Republic. It would make it possible to expropriate Russian-state-owned property if the Czech government determined that it posed a risk,¹⁷ in return for compensation.¹⁸ Since then, there has been no significant movement on this issue, despite the fact that an increasing number of Western states, including our closest allies, are adopting similar measures. Despite the legal difficulties we should debate concrete measures for confiscation of Russian assets and prepare the follow-up steps.

Termination of the Exemption from European Sanctions Against Russian Crude Oil Transported Via Continental Pipeline

In 2022, the Czech Republic, Hungary, and Slovakia jointly negotiated an exemption from the common EU sanctions on the Russian crude oil transported via the Druzhba continental pipeline. At the time, the decision was justified by the time-consuming process of finding alternate energy sources and expanding the capacity of the TAL-IKL pipeline, with the government publicly promising to phase out the Russian energy resources by mid-2025¹⁹. Presently, it is clear that the route for non-Russian oil is on track to be modernized by the beginning of 2025, which should accelerate the process

16 Directive (EU) 2024/1226 of the European Parliament and of the Council of 24 April 2024 on the definition of criminal offences and penalties for the violation of Union restrictive measures and amending Directive (EU) 2018/1673, online: <https://eur-lex.europa.eu/eli/dir/2024/1226/oj>

17 “If the Ministry of Foreign Affairs receives information that a subject has threatened the security, sovereignty or territorial integrity of the Czech Republic or its democratic foundations, and if it is in the foreign policy and security interests of the Czech Republic, it shall submit to the Government a proposal for the adoption of measures.”

18 There has been discussion that the compensation would be frozen as part of the international sanctions.

19 CEEEnergy News, “Czechia to be completely independent from Russian oil by mid-2025, confirmed Prime Minister”, 15 June 2024, <https://ceenergynews.com/oil-gas/czechia-to-be-completely-independent-from-russian-oil-by-mid-2025-confirmed-prime-minister/>.

of canceling the (legally indefinite) exemption from the official EU sanctions regime. PKN Orlen, the main commercial energy company owned by the Polish state, has announced its ability to cease further Russian energy purchases.²⁰ At the same time, for the country and society that prides itself on its support to Ukraine, the statistics showing that since 24 February 2022 it has effectively sent five times more to Russia than to Ukraine come as a shock.²¹

Thus, it would be a strong symbolic and political gesture for the Czech Republic to be the first among the trio of countries to cancel the exemption and complete the pivot to non-Russian sources of energy. However, in the longer term, the only way out of supporting authoritarian countries is to completely switch off fossil fuels. It would have an impact, since energy has been a huge source of revenue for the Russian war machine, comprising up to 40 percent of the budget.²²

20 ČTK, “Šéf Orleu: Po rozšíření infrastruktury v Česku firma odmítne ruskou ropu”, 19 August 2024, <https://www.ceskenoviny.cz/zpravy/2557283>.

21 By March 2024, the Czech government had paid 57 bn. CZK of aid to Ukraine vs. 271 bn of energy revenue to Russia. Reporter CT, “Česko se zbavilo závislosti na ruskem plynu, za ropu ale stále platí miliardy,” CT24, 16 April 2024, min. 16:41, available at: <https://ct24.ceskatelevize.cz/clanek/domaci/reporteri-ct-cesko-se-zbavilo-zavislosti-na-ruskem-plynu-za-ropu-ale-stale-plati-miliardy-348228>

22 The Oxford Institute for Energy Studies, “Follow the Money: Understanding Russia’s oil and gas revenues,” March 2024, online, https://www.oxfordenergy.org/wpcms/wp-content/uploads/2024/03/Follow-the-Money-Russian-Oil.pdf?link_id=0&can_id=03e18bbba975b454033728a03ac271af&source=email-support-ukraine-use-our-social-media-pack-and-join-the-movement&email_referrer=email_2424739&email_subject=support-ukraine-use-our-social-media-pack-and-join-the-movement.

RECOMMENDATIONS TO STRENGTHEN THE IMPLEMENTATION OF SANCTIONS AGAINST RUSSIA IN THE CZECH REPUBLIC

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