

In the context of the constant evolution of the sanctions adopted by the European Union against the Russian Federation in response to the war in Ukraine, the Government Emergency Ordinance No. 202/2008 on the implementation of international sanctions (&quot;GEO 202/2008&quot;) was amended by the Government Emergency Ordinance No. 135 of 21 November 2024, published in the Official Gazette, Part I, No. 1221 of 4 December 2024 (&quot;GEO 135/2024&quot;).

1. Regulation

The legislative amendment is motivated by the implications for the national economy of the sanctioning regime established at European level, making it necessary to grant certain derogations and to recognize Union instruments to unblock economic activities. The legislative act also aims to resolve the negative conflict of competence between national authorities and to implement tougher penalties for non-compliance with the provisions in force

2. Authorizing derogations and recognizing special supervision systems

GEO 135/2024 clarifies the procedure to be followed by any person justifying an interest in requesting a derogation and introduces new special situations justifying such a derogation, such as the provision of humanitarian aid (medical supplies, food, transfers of humanitarian workers).

Article 8 of GEO 202/2008 introduces two new paragraphs regulating the procedure for granting financial derogations, as follows:

- Para. (6): For granting a derogation from the sanction of freezing funds and the prohibition to make funds available, the National Agency for Fiscal Administration (NAFA) shall be competent to decide upon the request, with a reasoned opinion, which shall be issued by the competent national supervisory authority, within a maximum of 5 working days from the receipt of the request by the competent supervisory authority;
- Para. (7): The granting of the derogation from the financial sectoral restrictive measures shall be made by the competent national authority, with the reasoned opinion, which shall be issued by the financial supervisory authority for the economic activities concerned, within a maximum of 5 working days following the receipt of the request by the competent authority.

With regard to special supervision measures put in place by other Member States, Article 84 of GEO 202/2008 introduced by GEO 135/2024 stipulates that they are recognized at national level by the Ministry of Foreign Affairs (MFA), on the basis of the advisory opinion of the Inter-institutional Council.

Important! According to Art. 81 para. (5) of GEO 202/2008, the effect of the establishment of the system of special supervision provided for in para. (1) is to unfreeze the funds and/or economic resources of the legal person. Therefore, although OUG 135/2024 does not provide clarity in this regard, we consider that for transactions with a company from a Member State benefiting from this system it is not necessary to obtain a derogation within the meaning of OUG 202/2008, as it is sufficient to submit an application to NAFA to obtain the MFA decision recognizing the special supervision measures established in that Member State.

3. Competent authorities

The competent national authorities in the field of international sanctions, according to Art. 12 of GEO 202/2008, amended by GEO 135/2024, are:

- MFA, through the Export Control Department, for restrictions on operations with military goods;
- Ministry of Economy, Entrepreneurship and Tourism for authorizing trade in goods subject to international sanctions;
- Ministry of Transport and Infrastructure for transport restrictions;
- Ministry of Energy for restrictions on energy resources;
- National Agency for Public Procurement and, where appropriate, the Court of Auditors for restrictions on public procurement;
- National Audiovisual Council for audiovisual restrictions;
- The National Authority for Administration and Regulation in Communications for restrictions on broadcasting or permitting, facilitating or otherwise contributing to the broadcasting of any content, except for those under the competence of the National Audiovisual Council;
- State Office for Inventions and Trademarks for restrictions on industrial property rights;
- Ministry of Agriculture and Rural Development for restrictions in agriculture;
- Romanian Customs Authority for restrictions on goods entering or leaving the EU;
- The National Office for Preventing and Combating Money Laundering for overseeing the implementation of international sanctions freezing funds and economic resources by the reporting entities under its supervision, in accordance with the legislation in force on combating money laundering;
- National Gambling Office for supervising the implementation of international sanctions freezing funds or economic resources by the reporting entities under its supervision;
- The Financial Supervisory Authority (FSA) for the supervision and control of how supervised entities and branches apply the international sanctions freezing of funds, the restrictions on the

transfer of funds adopted to prevent nuclear proliferation, as well as the sector-specific international sanctions specific to the financial instruments and investments sector, the insurance and reinsurance sector and the private pension system sector;

- The National Bank of Romania (NBR) for the supervision and control of the implementation of international sanctions freezing funds, restrictions on certain transfers of funds and financial services, adopted to prevent nuclear proliferation, and sector-specific international sanctions specific to the financial banking sector by certain categories of entities;

- NAFA for the settlement of requests for derogations from the application of international sanctions related to the freezing of funds and the prohibition to make funds available and for the authorization of requests by financial and credit institutions regarding sector-specific international sanctions.

Penalties

According to Article 26 of GEO 202/2008 amended by GEO 135/2024, contraventions are punishable by a fine from RON 10,000 to RON 100,000 and, where appropriate, confiscation of goods intended for, used or resulting from the contravention. New contraventions are introduced (Art. 26 paragraph (1) lit. c) of GEO 202/2008), namely:

- Failure to comply with the obligation to notify the competent authorities about persons or goods subject to international sanctions (Art. 7 paragraph (1) of GEO 202/2008);

- Failure to communicate the documents requested by the competent national authorities (Art. 9 para. (2) of GEO 202/2008);

- Failure to comply with due diligence obligations, to establish monitoring procedures, to provide regular notification of transfers of funds outside the EU and to report on measures to implement international sanctions (Art. 18 paras. (1) and (4)-(6) of GEO 202/2008).

Also, Article 261 of GEO 202/2008 introduced by GEO 135/2024 regulates a series of contraventions that can be applied by the NBR and FSA to the entities supervised by these authorities.

**Important!** We expect to see a tightening of penalties for violations of regulatory acts governing sanctions adopted by the European Union, including national implementing acts, following the adoption of EU Directive No. 2024/1226 of 24 April 2024 on the definition of offenses and penalties for breaches of Union restrictive measures and amending Directive (EU) 2018/1673 (‘EU Directive 2024/1226’).

The Directive aims to standardize the application and criminalization of non-compliance with sanctions by Member States

Until now, Member States were not obliged to criminally prosecute the violations of these measures. Under the Directive, Member States will be obliged to:

- Assure the criminal prosecution of conduct constituting a criminal offence within the meaning of Directive (EU) 2024/1226 (e.g. trade in goods or services the import or export of which is prohibited or restricted or making funds or economic resources available to sanctioned persons), subject to the possibility of applying a threshold for transactions or activities with a value of less than EUR 10,000;

- Implement prison sentences of one to five years, in addition to fines and supplementary penalties for natural persons, and fines between 1% and 5% of their total turnover or between EUR 8 million and EUR 40 million in addition to additional penalties (i.e. exclusion from public funding; placement under judicial supervision) for legal persons.

Each Member State must adopt the laws necessary to implement Directive 2024/1226 by May 20, 2025.