

RIPE NCC response: preconsultation Modernisation Dutch sanction system

Amsterdam, 17 August 2023

Introduction

As an organisation based in the Netherlands that has contributed to the technical operation and development of the Internet in Europe for nearly 30 years, the RIPE NCC welcomes the initiative from the Dutch government to gather input for a review of the Dutch sanctions' law, the core of which dates from the 1970's. We support the preconsultation's goal to define 'better and more effective legislation that is more closely aligned with the practice of compliance'¹.

While the preconsultation states that modernisation of the Dutch legal sanctions' regime is considered 'to meet even better the requirements set by European sanctions decisions and regulations'², and as such does not deal with the defining of actual sanctions themselves, we want to flag concerns in the context of having to comply with sanctions as an organisation headquartered in the Netherlands. These are not directly related with the elements described in the accompanying text of the preconsultation, but we hope our input contributes in a timely manner as the Dutch legislator intends to start work on a legislative proposal after processing the results of the preconsultation. Next to this we use the opportunity to provide an assessment of how in general sanctions can adversely harm the cross-jurisdictional provision of core Internet functions, which risks contributing unintendedly to fragmentation of the Internet as a global interconnected network of networks.

In summary

We have two main practical concerns as an entity dealing with the consequences of sanctions

1. The RIPE NCC offers services to its members in a region that consists of Europe, the Middle-East and Central Asia. While we comply with EU-sanctions that apply to us, we are also seriously affected by the impact of sanctions that do *not* apply to us and that are *not* determined by the EU. The Office of Foreign Asset Control (OFAC) Sanctions list is maintained by the United States Treasury Department. While we are under no obligation to comply with these sanctions, they are a concern for Dutch banking institutions that have operations in the US. Whether it is a matter of overcomplying or not, these banks make it impossible for us to receive membership fees from members in countries from our service region that are on an OFAC list;
2. In our efforts to comply with sanctions, we work with third party expertise to use the lists of EU-sanctioned entities and -persons to determine what measures to implement to whom. The lists of entities and persons, however, are not always clear as to whom a sanction actually applies to, especially as official registration numbers are not always added to entities, and persons can have common names. Without sufficient detail the assessment as to what this means in terms of compliance is left with us, while we remain liable if we make a wrong decision.

¹ <https://www.internetconsultatie.nl/sanctiestelsel/b1>

² Idem

The RIPE NCC and sanctions

The RIPE NCC, headquartered in Amsterdam, is one of the world's five Regional Internet Registries (RIRs). It is an association based on Dutch law with more than 20.000 members in 75 countries³. Our main role as RIR is to allocate and register blocks of so-called Internet number resources to organisations in our service region that run networks which collectively form the Internet. These Internet number resources are in the form of IPv4 and IPv6 address space and Autonomous System Numbers (ASNs). In order to be allocated Internet number resources, an organisation must become a member of the RIPE NCC.

In 2012, the RIPE NCC confirmed with Dutch authorities that the registration of Internet number resources was not subject to country-specific sanctions; however, EU financial restrictions on designated persons and entities do apply. In 2020, the Dutch Ministry of Foreign Affairs confirmed that they understood Internet number resources to be economic resources, as defined in the EU sanctions regulations, meaning that the registrations of any sanctioned entities must be frozen.⁴

While the RIPE NCC as an organisation lives within the jurisdiction of the Netherlands and will comply at all times with relevant legislation, the services it provides are of a cross-jurisdictional nature, in a region much larger than the European Union. This brings the risk that sanction legislation impacting the RIPE NCC as an RIR, either from a Dutch or EU angle, has, cross-jurisdictional consequences that can affect the authority of the RIPE NCC as a number resource registry and therefore potentially the interoperability and interconnectedness of networks in our service region. As such national and/or EU legislation can contribute, albeit unintended, to a politicisation of core Internet functions, the proper functioning of which is required to maintain a global and interconnected Internet.⁵

As a resolution from the RIPE NCC's Executive Board from February 2022 states⁶:

The Executive Board of the RIPE NCC believes that the means to communicate should not be affected by domestic political disputes, international conflicts or war. This includes the provision of correctly registered Internet numbering resources.

³ <https://www.ripe.net/about-us/what-we-do/ripe-ncc-service-region>

⁴ <https://labs.ripe.net/author/athina/how-sanctions-affect-the-ripe-ncc/>

⁵ The coordination of a global number registry system is critical to the stable and reliable operation of the Internet. Such a system is fundamentally based on trust, i.e. upon a general agreement among all Internet stakeholders regarding which registries are the authoritative record of who holds (and is entitled to use) which number resources. Should this agreement break down, the global Internet would quickly run into operational dysfunction, with no clarity on which network is using (or is entitled to use) which addresses. Such ambiguity could see multiple networks attempting to connect using the same addresses; at a minimum, it would seriously undermine the accuracy that could be assumed or expected from the authoritative registry system. Private sector organisations with responsibility for management of core Internet functions, such as the RIPE NCC, are necessarily domiciled in a specific state. And while one of the factors in selecting where to base such organisations is the stability and utility of that state's civic institutions (especially its judicial system, which is an essential means of ensuring accountability), there is also a presumption that domestic political positions will not affect or hinder the organisation's ability to carry out its remit in relation to the global Internet. See https://www.ripe.net/participate/internet-governance/multi-stakeholder-engagement/surveying-the-impact-of-sanctions-on-the-ripe-ncc_october-2022.pdf which was shared with the Dutch Ministry of Foreign Affairs in October 2022

⁶ <https://www.ripe.net/publications/news/announcements/ripe-ncc-executive-board-resolution-on-provision-of-critical-services>

The Executive Board of the RIPE NCC is committed to taking all lawful steps available to ensure that the RIPE NCC can provide uninterrupted services to all members across our service region and the global Internet community.

The RIPE NCC will publicly document all its efforts to ensure that the registry is not negatively affected by laws, regulations or political developments.

The RIPE NCC is not alone when it comes to seeing this risk. The Dutch Ministry of Foreign Affairs itself recently published the Dutch International Cyber Strategy, stating:

Within the EU, but also towards like-minded countries, the broad recognition will be advocated that organisations that are of importance for the neutral functioning of the public core of the internet should not be affected by restrictive measures like sanctions.⁷

And:

The government will continue this conversation within the EU and later on within other coalitions as well. If organisations such as Regional Internet Registries are affected by EU or other types of sanctions, this plays into the hands of countries who argue that the West with its sanctions politicises the discussion regarding the functioning of the Internet.⁸

This was previously raised in the Dutch Strategy Digital Economy, where the importance of core functions that facilitate the global, open and free Internet was emphasised. Functions, including those provided by the RIPE NCC, that the entire Internet relies and depends on and which should not be unduly interfered with by states.⁹

As RIPE NCC we want to prevent our services, offered across multiple jurisdictions, being (perceived as being) used for political purposes. In line with our mission, where we as an authority on unique Internet number resources enable people to operate and develop the Internet, we believe that Internet number resource registrations should not be used as a means to enforce political outcomes, and that doing so would have serious implications for the Internet. We have long campaigned to maintain the open Internet, and our ability to do this depends heavily on preventing the registry service we provide from being used to achieve political ends.

The 6th Russia sanctions' package from June 2022 included an amendment¹⁰ for Regulation (EU) No 269/2014:

Article 2 shall not apply to funds or economic resources that are strictly necessary for the provision of electronic communication services by Union telecommunication operators, for the provision of associated facilities and services necessary for the operation, maintenance and security of such electronic communication services, in Russia, in Ukraine, in the Union, between Russia and the Union, and between Ukraine and the Union, and for data centre services in the Union

⁷ <https://www.rijksoverheid.nl/documenten/publicaties/2023/06/09/internationale-cyberstrategie-2023-2028> , page 25

⁸ Idem, page 19

⁹ <https://www.rijksoverheid.nl/documenten/rapporten/2022/11/18/rapport-strategie-digitale-economie> , page 10

¹⁰ https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2022.153.01.0075.01.ENG&toc=OJ%3AL%3A2022%3A153%3ATOC

The Dutch Ministry of Foreign Affairs formally confirmed on 18 April 2023 that this exemption applies to the number resources that are provided by the RIPE NCC to listed entities and persons¹¹. However, besides the Russia sanctions other sanctions still apply to members of ours, from Syria and Iran. It is our position that the same reasoning with regard to the resources we distribute to Russian members should apply to all our members across our service region. We will therefore continue to investigate the possibility of a blanket exemption from EU sanctions regulation for Internet number resources.¹²

¹¹ <https://www.ripe.net/ripe/mail/archives/ncc-announce/2023-May/001654.html>

¹² <https://labs.ripe.net/author/athina/a-note-on-our-latest-sanctions-transparency-report/>

Practical areas of concern

As noted in the summary above, as it pertains to the modernisation of sanctions in the Netherlands, there are two main areas of concern as are outlined in more detail below, which we would consider require attention.

1. Implications of non-EU sanctions on EU organisations

Whilst the Dutch legal sanctions' regime deals with the national implementation and compliance with sanctions defined at the EU level, other countries define sanctions on their own terms. This leads to potential impacts for organisations based in the EU who are not targeted by those non-EU sanctions and which, in theory, are under no legal obligation to comply.

In the United States the Office of Foreign Assets Control administers and enforces economic sanctions programs primarily against countries and groups of individuals¹³. As stated by our Chief Legal Officer in a November 2021 RIPE Labs article¹⁴ :

Financial institutions in the Netherlands have also been working on their compliance with sanctions and anti-money laundering legislation. This comes after two banks received heavy penalties for non compliance. This has resulted in increased "Know Your Customer" (KYC) efforts, which can lead to restrictions for their customers. Dutch banks do not accept payments from EU sanctioned entities and in some cases from countries they identify as "high risk".

This situation has meant that the RIPE NCC has faced significant challenges in receiving membership funds from entities and individuals based in so called 'high risk' countries. The effect of this is that even though the RIPE NCC is not restricted by any EU or Dutch sanction laws from receiving payments from entities and individuals based in high-risk countries, whether they be sanctioned or not, due to the Dutch financial institutions extending their restrictions based on OFAC sanctions onto their customers we are unable to collect fees due from entities in these jurisdictions. Evidently this causes issues for the RIPE NCC as in order to maintain a free and open internet our services cannot be discontinued however at the same time we cannot be paid for the continuation of these critical services despite there being no laws which directly impact our ability to obtain due payment. By extending OFAC sanctions restrictions onto Dutch customers the Dutch financial institutions are therefore indirectly placing a significant burden onto EU based entities that do not have to directly comply with these measures but who nonetheless must do so in the knowledge that if they were to exercise their legal right to receive payments from entities in said jurisdictions that the banks would reject these payments and may even permanently close their accounts.¹⁵

We note that overcompliance is a matter that has been raised by the Dutch Ministry of Foreign Affairs and in this regard we would see forced compliance of restrictions under OFAC sanctions, which in theory should not have any effect on EU entities, as a prime example of such overcompliance. It is also worth noting that the majority of entities and individuals who are members of the RIPE NCC, and who reside in such 'high-risk' countries,

¹³ <https://ofac.treasury.gov/faqs/topic/1501>

¹⁴ <https://labs.ripe.net/author/athina/how-sanctions-affect-the-ripe-ncc/>

¹⁵ See for example <https://www.abnamro.nl/en/personal/payments/sanctions-measures.html>

Also the Minister of Foreign affairs stated during a Committee debate 5 July 2023: 'There are also a lot of companies that, either because of concerns about reputational damage or simply out of morality, are really overcomplying. They just don't want to go anywhere near any grey area.'

https://www.tweedekamer.nl/debat_en_vergadering/commissievergaderingen/details?id=2023A04844

do not have any EU sanctions (or OFAC sanctions for that matter) related alerts. Nevertheless, the RIPE NCC is forced to adhere to the restrictions brought on by Dutch financial institutions, this then causes a significant strain upon our resources.

2. EU sanctions: unclarity regarding exact sanctioned entities and persons

In our efforts to comply with EU sanctions, the RIPE NCC employs rigorous and continuous due diligence checks against all applicable EU sanction regulations, including through the use of third-party expertise and software, in order to identify which of our members might be affected and what measures may need to be enforced to maintain compliance.

A practical issue that has arisen in this regard however is when attempting to accurately identify which individual and, in some cases, entities are listed in the sanctions lists. At times the sanction lists do not provide sufficient identifying information in order to allow us to confidently state that an entity or individual is, or is not, listed on the sanctions list. In some cases entities listed on the sanction lists are not included with registration numbers, which causes issues with third party software when attempting to identify which entity is being screened. A more common issue is in the lack of identification for individuals on the sanctions list, predominately we see this issue in the middle East whereby there can be many individuals with the same name however the sanctions list often only provides as identifying information that the individual is a 'male'.

If for example, we as the RIPE NCC were to clear a sanction alert based on our good faith efforts, due to a lack of identifying information for a sanctioned person or entity in the applicable sanctions regulation, wherein we believe a sanctions match is a false match and this later turns out not to be the case, we would nevertheless be liable for the violation. On the other hand, given that sanctions investigations are a duty of result rather than a duty of effort this lack of identifying information may lead to situations whereby we over comply in the face of doubt. Generally, through deduction, we can be confident on identifying whether the individual being screened is, or is not, the individual on the sanctions list, but it does leave room some for error, which as noted above can lead to overcompliance. This issue can disproportionately affect citizens (with common names), due in no fault of their own, who reside in countries who are subject to some form of EU sanctions, further exacerbating the difficulties we encounter in maintaining a free and open internet.

To avoid such situations, and risks of overcompliance, we would strongly encourage the inclusion of more identifying information, whether that be registration numbers in the case of entities or dates of birth, nationality or other identifying information in the case of individuals.

As always, the RIPE NCC remains committed to working with the Dutch government to share its technical expertise and facilitate knowledge sharing between Dutch public authorities and the European technical community. We remain at your disposal for any questions you might have.