



Sanction breaches may result in punishment



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If a Danish company or person does not comply with a provision or a prohibition on a sanction under Danish law, including EU law, UN law and other international law that applies under Danish law, the company or person may be penalised under the rules on penalties for breach of sanctions, including rules of the Danish Criminal Code.

Non-compliance with a provision or a prohibition on a sanction may be penalised under section 110 c of the Criminal Code. A non-compliance may be penalised by a fine or imprisonment for up to four months. In particularly aggravating circumstances, an offense can be penalised by imprisonment for up to four years.

Section 110 c of the Criminal Code covers all provisions and prohibitions on sanctions that apply under Danish law, including EU law, UN law, and other international law that applies under Danish law. An example of this is the Dan-Bunkering case which is mentioned in the next section below.

If a Danish company or person does not comply with a provision or a prohibition on a sanction under Danish law, including EU law, UN law, and other international law that applies under Danish law, the company or person may also be fined on the basis of the company's or person's profit for the breach of the sanction. For example, this may be a fine in an amount that corresponds to 100% or 200% of the profit. In addition, the company or person may also be ordered to pay an amount corresponding to the profit to the Danish state. This penalty will be imposed by a decision of the court on confiscation of the profit made in breach of the sanction. An example of this is the Dan-Bunkering case which is mentioned in the next section.

Example of penalties for breaches of sanctions - the Dan-Bunkering case

Danish case law shows that a company or a person who does not comply with a provision or a prohibition on a sanction can be penalised.

An example of this is the criminal case concerning the Danish company Dan-Bunkering's supply of jet fuel for use in Syria in violation of EU sanctions.

The City Court of Odense in the case ruled on whether the company A/S Dan-Bunkering Ltd. had intentionally or negligently supplied jet fuel to Syria in violation of EU sanctions. In addition, the parent company Bunker Holding A/S and the individual Keld R. Demant, who was chairman of the board of Dan-Bunkering and managing director of the parent company, were both charged with intentional or negligent participation in the last 8 trades of jet fuel.

In all 33 trades, Dan-Bunkering had sold jet fuel to two Russian companies with delivery in the eastern Mediterranean. In some of the trades, the fuel had been transhipped in open sea areas by so-called "ship-to-ship" operations. On the basis of, among other things, trade documents, emails, unloading documents, and AIS data for the ships' navigation and geographical positions, the court found it proven that the Russian companies, after receiving the jet fuel from Dan-Bunkering, had delivered the jet fuel in the Syrian port of Port Banias. The jet fuel had then been used by the Russian Air Force for military operations in Syria. The court found that the deliveries objectively constituted infringements of EU sanctions.

The majority of the judges of the court found that Dan-Bunkering for all 33 trades must have realised that it was most probable that the jet fuel would be used by the Russian military in Syria. The majority thus found that Dan-Bunkering for all 33 trades committed an intentional violation of EU sanctions. The majority emphasised, among other things, that the trades were made by Russian employees at Dan-Bunkering's branch office in Kaliningrad, where the employees must have been aware of the Russian intervention in Syria. The majority also found that other important matters were that the two Russian companies had not previously purchased jet fuel from Dan-Bunkering, the quantity of the jet fuel delivered, and that Dan-Bunkering knew that the two companies were general agents of the Russian fleet and that the jet fuel, therefore, would be used by the Russian military.

The court unanimously found that both the parent company and the managing director in the last 8 trades, which were made in February to May 2017, had contributed to a negligent breach of EU sanctions. The reason for this was that in December 2016 the Danish Business Authority had contacted Dan-Bunkering and informed it that the agency had received information on Dan Bunkering's possible involvement in violations of sanctions against Syria by transport of jet fuel. Based on this and the performance of an internal investigation in the group of companies, the court found that the parent company and the managing director should have realised that the Russian company supplied jet fuel for use in Syria in violation of EU sanctions and that the parent company and the director could and should have stopped the trades.

By the court's judgment, Dan-Bunkering was penalised by a fine in the amount of DKK 30 million. The parent company was penalised by a fine in the amount of DKK 4 million. Both fines were imposed on the basis of the companies' profits from the trades. The fine for Dan-Bunkering's intentional violation of the rules was set to an amount which was about two times (double of) the profit. The fine for the parent company's negligent infringement was set to an amount that roughly corresponded to the profit on the last 8 trades.

The managing director was sentenced to 4 months in prison, which was made conditional. The court emphasised, among other matters, that the managing director was only being punished for a negligent violation of the sanctions and that the case processing time had been long.

In addition, the court ordered the confiscation of Dan-Bunkering's profit from the trades. The profit was assessed by the court to be approximately DKK 15.65 million.

Penalties for violation of laws and regulations on non-proliferation of weapons of mass destruction etc.

A violation of a law or a regulation on non-proliferation of weapons of mass destruction etc. may be punished under section 114 h of the Criminal Code by imprisonment for up to 8 years if the offender, in aggravating circumstances, does the following: (1) exports dual-use items without a permit, (2) for the purpose of the authorities' decisions on dual-use items provides incorrect or misleading information or conceals information relevant to the decision of the case, or (3) acts in violation of terms set in the authorities' decisions on dual-use items.

The legislation on non-proliferation of weapons of mass destruction etc. includes Danish rules and EU rules against the proliferation of products and knowledge (know-how) which can be used for the production of nuclear weapons, biological and chemical weapons as well as missiles can carry and deliver such weapons. The legislation includes EU legislation, laws, and administrative regulations in the form of executive orders, etc. as well as terms, orders, and prohibitions set or issued under such rules.

Dual-use items comprise products, including software and technologies, which can be used for both civilian and military purposes, as well as all items that can be used both for non-explosive purposes and to promote in any way the manufacture of nuclear weapons or other nuclear explosives. This follows from article 2(1) of EU regulation 428/2009. The regulation contains rules under which an export license in some cases is required for the export of dual-use items.