

EU SANCTIONS IN RESPONSE TO THE SITUATION IN UKRAINE

As of 28 February 2022

Please be advised:

The purpose of this memo is to summarise the new restrictive measures adopted by the European Union in response to the Russia-Ukraine conflict, effective as of 28 February 2022.

These measures are subject to change at any time and any relevant updates will be communicated.

In addition, these measures are complex. For this reason, each case must be examined individually and thoroughly in order to ensure every aspect of the case is covered and to determine the impact of the restrictions.

This memo does not address the specific measures against Belarus on account of its support for Russia; neither does it address measures taken by the United States.

Since 2014, the European Union has gradually been imposing individual sanctions and trade restrictions against Russia in specific economic sectors, in response to the unlawful annexation of Crimea.

Following Russia's decision to recognise the Donetsk and Luhansk oblast areas as independent entities and to unilaterally attack Ukraine, the European Union introduced new restrictive measures on 23¹, 25², and 28³ February 2022 to strengthen their arsenal of sanctions against Russia.

The European Union introduced four types of measures:

- Individual restrictive measures;
- Prohibition on the supply of certain goods and services useful to specific sectors of the Russian economy;
- Restriction or prohibition on particular banking or financial operations by Russian entities;
- Restrictions on accessing the European airspace.

The restrictive measures introduced by the European Union apply to any person inside or outside the EU territory who is a national of a Member State, to any legal entity inside or outside the EU territory, which is incorporated or constituted under the law of a Member State, and to any person or entity inside the EU or on board any aircraft or any vessel under the jurisdiction of a Member State.

1. Individual restrictive measures

The European Union has expanded the list of individuals and entities subject to asset freezes and travel bans to include all persons who facilitated Russian military aggression in Ukraine and/or hold influence in economic sectors that provide resources to the Russian Government.

The freezing of assets, funds and economic resources is aimed at a list of individuals who fall into the following categories:

- Natural persons responsible for supporting actions or policies which undermine the territorial integrity, sovereignty and independence of Ukraine or which obstruct the work of international organisations in Ukraine;

¹ Council regulation (EU) 2022/260; Council regulation (EU) 2022/261; Council regulation (EU) 2022/262; Council regulation (EU) 2022/263.

² Council regulation (EU) 2022/328; Council regulation (EU) 2022/330; Council implementing regulation (EU) 2022/332; Council decision (CFSP) 2022/327 à 2022/331

³ Council regulation (EU) 2022/334; Council regulation (EU) 2022/336

- Legal entities supporting actions which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine;
- Legal entities in Crimea or Sevastopol whose ownership has been transferred contrary to Ukrainian law, or legal entities which have benefitted from such a transfer;
- Natural or legal persons supporting or benefitting from Russian decision-makers responsible for the annexation of Crimea or the destabilisation of Ukraine;
- Natural or legal persons conducting transactions with the separatist groups in the Donbas region of Ukraine;
- Natural or legal persons supporting or benefitting from the Russian Government, which is responsible for the annexation of Crimea and the destabilisation of Ukraine;
- Leading businesspersons involved in economic sectors which represent a substantial source of revenue for the Russian Government.

As of 28 February 2022, the list of persons affected by the individual restrictive measures includes 679 natural persons and 53 legal entities. This list includes members of the Russian Government (such as the President and the Minister of Foreign Affairs), members of their families, oligarchs, and individuals active in key sectors of the Russian economy.

Warning:

- The freezing measures concern assets, funds, and resources held directly or indirectly by the above persons;
- The measures also cover the assets of natural and legal persons, entities, and organizations associated with the above persons;
- The direct or indirect provision of assets, funds, and economic resources to a sanctioned person or someone associated with a sanctioned individual is prohibited.

2. Sectorial prohibitions

The sectorial prohibitions aim to prevent the supply (sale, export, transfer) of specific goods and services in Russia or for use in Russia, in certain key sectors of the Russian economy or in general.

The applicable texts sometimes provide exemptions: some are automatically applicable (e.g. when goods are used for humanitarian purposes), others require a license to be obtained from the competent authorities (e.g. when the transaction relates to a contract concluded before 26 February 2022, or when it is related to maritime safety) according to criteria that may vary depending on the counterparty involved in the transaction. However, no exemption is provided when the end-user could be military or, for particularly sensitive goods, when it involves certain entities listed in the annexes of the EU Regulation n° 2022/328.

2.1 Dual-use goods: all sectors

- Prohibition on the sale, supply, transfer or export from the EU, or by EU nationals, or using EU-registered vessels or aircraft, of dual-use items to any person or entity in Russia or for use in Russia;
- Prohibition on providing to any person or entity in Russia (or for use in Russia) any brokering services, technical assistance, or other services related to dual-use items, or their supply, manufacture, maintenance, or use;
- Prohibition on providing financing or financial assistance for the above operations.

2.2 Defence and security sector: all types of goods and technologies

- Prohibition on selling, supplying, transferring or exporting goods and technologies that may contribute to the military and technological strengthening of Russia or the development of the defence and security sector to any person or entity in Russia or for use in Russia ;
- Prohibition on providing brokering services, technical assistance, or other services related to such goods or their supply, manufacture or maintenance, to any person or entity in Russia or for use in Russia⁴;
- Prohibition on providing provide financing or financial assistance for the above transactions.

2.3 Petroleum Refining Sector: all types of goods

- Prohibition on selling, supplying, transferring or exporting goods or technologies suitable for use in oil included in the list annexed to EU Regulation n° 2022/328, to any person or entity in Russia or for use in Russia;

⁴A list of the goods and technologies is annexed to EU Regulation n°2022/328, as well as the list of goods and technologies for which an exemption is possible.

- Prohibition on providing brokering services, technical assistance, or other services in connection with such goods or their supply, manufacture or maintenance, to any person or entity in Russia or for use in Russia;
- Prohibition on providing financing or financial assistance for the above operations.

2.4 Aviation and Space Industry Sector: all types of goods

- Prohibition on selling, supplying, transferring or exporting goods or technologies suitable for use in the aviation or space industry⁵ to any person or entity in Russia or for use in Russia;
- Prohibition on providing insurance or reinsurance services in connection with such goods to any person or entity in Russia or for use in Russia;
- Prohibition on conducting maintenance services on an aircraft or one of its components in connection with the above property, to any person or entity in Russia, or for use in Russia;
- Prohibition on providing to any person or entity in Russia (or for use in Russia) any brokering services, technical assistance or other services in connection with such goods or their supply, manufacture, maintenance or use;
- Prohibition on providing financing or financial assistance in connection with such transactions.

3. Financial Sanctions

The purpose of financial sanctions is to cut off Russia's access to the EU's capital markets.

The sanctions are as follows:

- A ban on trading⁶ in securities or money market instruments issued by the Russian Government, by the Russian Central Bank, or by credit or other institutions operating in key sectors (oil, aviation, etc.) controlled by the Russian state, by entities owned by such institutions, or by entities acting on behalf of the latter entities;

This includes the following banks: Alfa Bank, Bank Otkritie, Bank Rossiya, and Promsvyazbank, VEB;

The scope of these measures is complex since they cover transactions using financial instruments of different maturities, taking into account their date of issue;

Through these measures, 70% of the Russian banking system (in terms of assets), the government, and major state-owned companies will be unable to refinance themselves in the EU's capital markets.

- A ban on accepting any deposits from Russian nationals or natural persons residing in Russia, or legal entities established in Russia, if the total value of deposits per credit institution exceeds 100 000 EUR, except for deposits required for cross-border trade in goods and services between the EU and Russia which are not subject to the ban, and other exceptions.

In addition, the European Union decided to exclude Russian banking institutions from the SWIFT system. This measure has not been legally finalised yet, but this could happen in the next few hours. This would make it virtually impossible to process international payment orders involving Russian banks.

4. Restrictions on access to European airspace

Any aircraft registered in Russia or belonging to a Russian natural or legal entity is prohibited from entering the EU airspace.

5. Sanctions applicable to Ukrainian territories recognised as independent by Russia

The European Union has also imposed specific sanctions on the Donetsk and Luhansk oblasts - areas which are no longer controlled by the Ukrainian Government.

These measures include:

- An import ban on goods originating from these territories into the European Union, and on the provision of insurance, reinsurance, financing, or financial assistance in connection with the import of such goods;

⁵ The list in the Annex to EU Regulation n°2022/328 refers in general to goods under heading 88 "Air and space travel" of the customs nomenclature.

⁶ Purchase, sale, provision of investment services, assistance in issuing securities

However, the ban does not apply to goods that are accompanied by a certificate of origin issued by the official Ukrainian authorities;

- Restrictions on trade-related listed goods, which may be used for transportation, telecommunications, energy, gas, mining, or oil exploration sectors. The list includes, for example, salt, earth, and stone, various metals, engines, many types of machinery, tractors, measuring devices, etc.;
- A ban on real estate investments, equity investments, provision of loans or financing to entities located in these territories;
- A ban on providing construction, engineering, brokerage, or technical assistance services related to infrastructure in these territories;
- A ban on providing services related to tourism activities in those territories.

A transitional period is generally provided for contracts entered into before 23 February 2022, as well as the possibility of obtaining a license for specific operations.

Conclusion and recommendations

The measures are likely to evolve at any time and daily monitoring is essential. As of now, we recommend to:

- Identify all activities that have a link with Russia or with Russian counterparties;
- Carry out a complete screening of the counterparties (by identifying the entity that directly or indirectly owns them) and other persons involved in your operations (paying attention to Ukrainian counterparties that could be targeted since they are considered separatists);
- Identify the place of destination or use of the goods or services subject to the transaction to verify whether it is Russia, or the territories of Donetsk and Luhansk;
- Check which banks are involved in the financing channels of the trade or payment operations;
- Check the logistic circuits to ensure the absence of Russian aircraft or aircraft belonging to a Russian entity;
- Check the nature of goods or services traded to Russia, Donetsk or Luhansk in relation to the sectors targeted by the measures;
- If necessary, ask for additional information you may lack, in order to ensure operations comply with the new measures;
- Review contracts to ensure that appropriate sanction clauses are included;
- Analyse the impact of the new restrictive measures on your insurance coverage.

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