

Safely navigating EU sanctions regimes: how to stay compliant

Practical advice for businesses

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Objectives and restrictive measures

The European Union has repeatedly adopted sanctions against Russia since March 2014 in response to the annexation of Crimea and Russia's recognition of Donetsk and Luhansk, followed shortly by its military aggression against Ukraine. According to the latest information published by the European Council, these sanctions currently apply to over 1,000 individuals and almost 100 entities listed in the annex to the EU Regulation.

At the same time, the European Council decided to extend the application of the sanctions until 15 September 2022. Further, as Belarus is considered to have collaborated with Russia's actions in Ukraine, it has also been the subject of new restrictive measures, in addition to those already in place.

EU sanctions do not require a transition period of general application. However, some specific prohibitions envisage a wind-down period. Such EU sanctions cover a wide range of areas and could be grouped into the following main categories.

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- **Asset freezes and visa restrictions** – The EU has decided to freeze assets held by influential Russian businessmen, Russian banks and Russian state entities so that no funds or economic resources can be made available to them directly or indirectly. A travel ban has also been imposed on individuals.
- **Financial and capital markets restrictions** – Russia and its government, the Central Bank or entities / bodies acting on behalf of / at the behest of the Russian Central Bank are prohibited from purchasing, selling or otherwise dealing with transferable securities and money markets or for these entities to make any new loans or credits. Also, these restrictions include cutting off certain banks from SWIFT, prohibiting the acceptance of any deposits from Russian nationals or natural persons if the total value of the deposit of these persons / entities exceeds EUR 100,000 and deposits to crypto-wallets or physically taking euros into Russia.
- **Trade and investment restrictions** – the sale, transfer or export to Russia of dual-use items as well as advanced technology items that can contribute to Russia's defence and security capabilities, oil refinery equipment, aviation, aerospace and maritime items, iron and steel products, luxury products, jet fuel and other goods is prohibited. The fifth package of sanctions also imposes a ban on imports from Russia of coal and other solid fossil fuels and also of other goods such as wood, cement, seafood and liquor. Additionally,

investment in and contribution to projects co-financed by the Russian Direct Investment Fund or the provision of public financing or financial assistance for investments in or trade with Russia are prohibited.

- **Media restrictions** – A ban was imposed for operators to broadcast or to enable, facilitate or otherwise contribute to the broadcast of any content of a number of Russian stations.
- **The closure of EU airspace, EU ports and road access for Russian and Belarusian operators.**

In addition to the above, a new EU package of sanctions is planned to be adopted soon. This would include, among other things, an embargo on Russian oil and the exclusion of the country's largest bank - Sberbank - from the SWIFT system.

Similar sanction measures have been implemented by many other partner states, including, among others, the United States, the United Kingdom, Australia, Japan and Canada. Apart from their effectiveness, this also resulted in an intertwined system of compliance checks international groups, operating in the EU and such other partner states for example, need to put in place to ensure effective internal compliance too.

Obligations of EU companies: practical angles and expected developments

The EU measures are also addressed to all natural, legal persons and bodies under EU jurisdictions (including entities and bodies incorporated in or constitutes under the law of a Member State, as well as persons doing business in the EU territory). Whereas Council Regulations are directly binding on all persons under the jurisdiction of EU Member States. For example, regulations imposing freezing measures apply, among other things, to EU companies, including financial and credit institutions, doing business in whole or in part in the EU, and to EU nationals.

In order for EU companies to ensure that they comply with EU sanctions and that they are regularly updated about new measures, they should carry out due diligence and implement dedicated internal procedures, which need to be applied to clients, suppliers and other business partners of the company as well.

There is no one size fits all model of due diligence. It is up to each company to develop, implement and update its sanctions-related compliance programme based on its group and individual business model, geographic areas of operations and related risk assessments. In some specific sectors (such as, for example, aviation, maritime, energy and natural resources) specific additional rules may be relevant as well.

Sanctions-related restrictions and compliance programmes should not be seen as the same as existing KYC or anti-money laundering policies. For example, anti-money laundering legislation already sets out different requirements on certain businesses to verify the identity of customers and to refrain from anonymous transactions in certain circumstances. Also, in some instances, the EU Regulations which impose financial restrictive measures create additional obligations on EU companies to "know their customer".

Local authorities and regulators have also more recently started to confirm that risk assessments and due diligence checks for sanctions compliance programmes are different processes than those for KYC and AML. Such local authorities and regulators expect such sanctions compliance checks to be "actual and profound", thus compliance

programmes need to be up-to-date and robust (especially for business sectors with higher scrutiny, such as the financial sector for example).

All legal persons and individuals under EU jurisdiction must inform the competent authorities of information at their disposal which facilitates the application of financial restrictive measures. This obligation includes providing the details of any account frozen (e.g. holder, value of funds frozen), and other information which may be useful (e.g. identity data of the designated person, details of incoming transfers which result in the crediting of a frozen account, attempts by customers or other persons to make funds or economic resources available to a designated person). Discussions have started in several EU member states on possible further developments after freezing resources (e.g. what other steps and/or measures may be considered, such as confiscation?).

Member States are also responsible for the implementation of EU sanctions as well as identifying breaches and imposing penalties. Therefore, Member States, in the context of their obligation to adopt national rules setting forth effective penalties for infringements of the relevant sanctions prohibitions, are also enacting local legislation and are putting in place national enforcement channels as well.

In line with international changes, further local legislation should be expected, combined in conjunction with enhanced local enforcement.

We are also seeing enhanced communication and cooperation between authorities and regulators both domestically and internationally, thus cross-border matters are likely to emerge further. As a result, local legislation, related enforcement and international cooperation are expected to continue to evolve.

Thus, depending on the laws of the relevant Member States, possible sanctions applied to companies can vary considerably, from administrative sanctions such as, for example, fines and, more seriously, to the suspension of business activities, the revocation of permits and possible criminal liability as well.

Based on the recent developments so far in some of EU jurisdictions, while there are still some grey areas and/or clarifications expected, **local enforcement will gain traction**. And that may be even more challenging for international groups operating in several jurisdictions such as the EU, the UK, the US, Canada, Japan, Australia, etc., due to the several layers of careful compliance measures and checks which should be put in place to be able to safely navigate different regimes.

We have seen that a planned and coordinated approach with international specialised teams, familiar with several jurisdictions, brings not only added value, but also addresses significant risks and saves considerable time and costs - now and in the future.

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