

SANCTIONS TRACKER: FURTHER EU AND UK SANCTIONS IMPOSED ON RUSSIA IN RESPONSE TO UKRAINE CONFLICT

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Legal Briefings

Our experts break down the latest developments as Western states extend sanctions in the wake of the Ukraine conflict

UK

New sanctions pending:

On 25 February, the UK announced that President Vladimir Putin and Foreign Minister Sergei Lavrov were being placed on the UK's asset freezing list. Further restrictions, including in respect of the Central Bank of the Russian Federation (CRB), the Russian National Wealth Fund, and the Ministry of Finance of the Russian Federation, were announced on 28 February. These measures are in addition to the various sanctions announced on 24 February (covered in our previous blogpost), legislation implementing, which is expected early this week.

The additional measures announced on 28 February 2022 will introduce a prohibition on UK persons undertaking financial transactions involving the CRB, the Russian National Wealth Fund, and the Ministry of Finance of the Russian Federation, and the UK Government has announced it will "immediately take all necessary steps to bring into effect restrictions".

The additional measures announced on 28 February also include:

- Restrictions on Russian financial institutions – VTB Bank was designated by the UK last week, along with five other Russian banks, and it is not yet known what additional financial institutions may be subjected to restrictions;

- Restrictions to prevent Russian companies from issuing transferable securities and money market instruments in the UK, in addition to the restrictions on the Russian state raising sovereign debt announced last week. These measures are likely to be similar to those implemented by the EU (discussed below), although the identities of the relevant entities are not yet known;
- Powers to prevent designated banks from accessing Sterling and clearing payments through the UK, which is intended to replicate US measures and prevent targeted banks from processing payments through the UK or to have access to UK financial measures. The EU introduced similar measures late last week (see below); and
- Additional trade restrictions, including a prohibition on the export of certain high-end and critical technical equipment and components in sectors including electronics, telecommunications and aerospace. It is not clear if this is in addition to the ban on the export of dual-use items for use in these sectors announced at the end of last week. The announcement reiterated that trade restrictions applicable to Crimea will be extended to apply to Donetsk and Luhansk.

New General licence issued:

Importantly, on 25 February, the UK's Office of Financial Sanctions Implementation announced the publication of a new Russia-related general licence allowing for a 30-day wind-down period of positions involving VTB Bank. General Licence INT/2022/1272278 (the GL) provides that any person may wind down any transactions to which it is a party which involve VTB Bank or VTB Capital plc (and any entity owned or controlled by VTB Capital plc incorporated in the UK) (together defined as the "UK Subsidiary"), including the closing out of any positions. That person, a "relevant institution" (ie, a financial institution, clearing house, counterparty or payment system operator), VTB Bank, or the UK Subsidiary, can carry out any activity reasonably necessary to effect this.

The GL does not authorise any act which the person carrying out the act knows, or has reasonable grounds for suspecting will result in funds or economic resources being dealt with or made available in breach of the Russia (Sanctions) (EU Exit) Regulations 2019, save for the specific permission mentioned above.

The GL will expire on 27 March 2022. We anticipate that this will be a welcome development to assist financial institutions and others navigate some of the immediate issues raised by the additional of VTB Bank to the asset freeze list.

THE EU:

Further to the EU's 24 February announcement that additional Russia sanctions had been agreed by Foreign Ministers, further details of these measures were announced late on 25 February and on the morning of 28 February.

The package of sanctions adopted comprises:

- additional asset freeze designations;
- an expansion of the existing Russia capital markets restrictions;
- a new prohibition on the listing and provision of services in relation to shares of Russia state-owned entities on EU trading venues;
- a new prohibition on the acceptance of deposits exceeding certain values from Russian nationals or residents, the holding of accounts of Russian clients by the EU Central Securities Depositories, and the selling of euro-denominated securities to Russian clients;
- restrictions on the supply to Russia of specific goods and technologies used in oil refining;
- trade sanctions relating to goods and technology in the aviation and space industry, as well as restrictions on the provision of certain related services;
- further restrictions on the exports of dual-use goods and technology and other goods and technology which might contribute to Russia's technological enhancement of its defence and security sector;
- the removal of visa facilitation provisions allowing privileged access to the EU for diplomats, other Russian officials and business people;
- restrictions on transactions with the Russian Central Bank;
- restrictions on the aviation industry (prohibiting all Russian aircraft or aircraft owned or chartered by Russian persons from entering EU airspace except in very limited circumstances).

Legislation implementing these restrictions was published on 25 and 28 February. We set out further detail on the provisions below (save for the visa facilitation provisions, which will have less direct relevance to companies involved in Russian trade).

Asset freezes:

The EU's announcement indicates that asset-freezing measures will apply to a total of 654 individuals and 52 entities.

Council Regulation (EU) 2022/330 amends Regulation (EU) 269/2014 to expand the designation criteria available for adding individuals and entities to the asset freeze list. The new grounds comprise:

- natural or legal persons, entities or bodies supporting, materially or financially, or benefitting from the Government of the Russian Federation, which is responsible for the annexation of Crimea and the destabilisation of Ukraine; and
- leading businesspersons or legal persons, entities or bodies involved in economic sectors providing a substantial source of revenue to the Government of the Russian Federation, which is responsible for the annexation of Crimea and the destabilisation of Ukraine.

Council Implementing Regulation (EU) 2022/332 (Regulation 2022/332) amends the existing list of Ukraine-related designated persons (contained in Regulation (EU) No 269/2014) to add:

- members of the National Security Council who supported Russia's immediate recognition of the independence of Donetsk and Luhansk;
- persons said to have facilitated Russia's military aggression from Belarus; and
- members of the Russian State Duma not already included in the EU's asset freeze list.

The full list of names added to the EU's designated persons list appears in Annex I to Regulation 2022/332; as is the case with the UK, this includes Vladimir Putin and Sergei Lavrov. These additions to the list are all individuals, with no additional entities designated under Regulation 2022/332 (although, as is the case with all EU asset freezes, sanctions will also apply to entities owned or controlled by the new designated persons).

New financial sanctions:

The new economic sanctions are introduced by Council Regulation (EU) 2022/328 (Regulation 2022/328), amending Regulation (EU) No 833/2014 (Regulation 833/2014).

Regulation 2022/328 makes the following amendments to the existing Russia capital markets sanctions:

- expanding the list of entities to which restrictions apply (Sectorally Sanctioned Entities) to include:
 - additional Russian credit institutions, as listed in the new Annex XII to Regulation 833/2014 (Alfa Bank, Bank Otkritie, Bank Rossiya and Promsvyazbank);
 - additional Russian state-owned entities in which Russia, its Government or Central Bank have the right to participate in profits or with which Russia, its Government or Central Bank have other substantial economic relationships, as listed in the new Annex XIII to Regulation 833/2014 (Almaz-Antey, Kamaz, Novorossiysk Commercial Sea Port, Rostec, Russian Railways, JSC PO Sevmash, Sovcomflot, and United Shipbuilding Corporation); and
 - adding new Sectorally Sanctioned Entities to the existing Annex IV of Regulation 833/2014 (as listed in Annex III to Regulation 2022/328);
- from 12 April 2022 the restrictions will apply to all transferable securities or money market instruments issued by Sectorally Sanctioned Entities, ie, without the 90 or 30-day maturity criterion which had previously applied; and
- introducing a new prohibition (as of 12 April 2022) on listing and providing services on trading venues registered or recognised in the EU for the transferable securities of any legal person, entity or body established in Russia and with over 50% public ownership (ie, not just the listed Sectorally Sanctioned Entities).

The existing lending restrictions have also been expanded so that all lending to a Sectorally Sanctioned Entity is prohibited from 26 February 2022, irrespective of tenor.

In terms of new economic sanctions measures, it is prohibited to accept any deposits from Russian nationals, natural persons residing in Russia or legal persons, entities or bodies established in Russia if the total value of deposits per credit institution exceeds €100,000 (new article 5(b) of Regulation 833/2014). However, this does not apply to (i) nationals or residents of a Member State, or (ii) deposits that are necessary for non-prohibited cross-border trade between the EU and Russia. Member State competent authorities may also authorise the acceptance of prohibited deposits on various grounds, including basic needs, legal fees, extraordinary expenses or humanitarian activities. Without prejudice to any applicable rules regarding confidentiality etc, credit institutions will be required to supply to their competent authority a list of deposits exceeding €100,000 held by Russian account-holders by no later than 27 May 2022, with updates every 12 months. This reporting requirement will also apply to deposits exceeding €100,000 held by Russian nationals or residents who have acquired citizenship or residence rights in a Member State through an investor citizenship or residence scheme.

It is also prohibited:

- for EU central securities depositories to provide any account-holding services (services defined in the Annex of Regulation (EU) No 909/2014) to Russian nationals/residents or Russian entities for transferable securities issued after 12 April 2022 (new article 5(e) of Regulation 833/2014); and
- to sell euro-denominated transferable securities issued after 12 April 2022, or units in collective investment undertakings providing exposure to such securities, to any Russian national/resident or Russian entity (new article 5(f) of Regulation 833/2014).

Further restrictions were introduced on 28 February by the publication of Regulation 2022/334 in that all transactions related to the management of the reserves and assets of the Central Bank of Russia, including transactions with any legal person, entity or body acting on its behalf or at its direction are prohibited (by the addition of new articles 5a(4) to (6) of Regulation 833/2014). A derogation has been introduced to allow the competent authorities to authorise a transaction if it is strictly necessary to ensure the financial stability of the Union as a whole or a Member State.

Trade sanctions:

The EU's new trade sanctions are also implemented by Regulation 2022/328.

This expands the existing restrictions on dual-use goods. Previously, the prohibition on supplying such items to Russia only applied where those items were intended for military use or a military end-user; article 2 of Regulation 833/2014 has now been amended to contain a blanket prohibition (subject to licensing) on the supply of dual-use items (now defined in accordance with the EU's new dual-use regulation – Regulation (EU) 2021/821) to any natural or legal person in Russia, or for use in Russia. There are also related prohibitions on the supply of technical assistance, brokering services, other related services, financing and financial assistance. The available licensing grounds include the provision of restricted goods or services for non-military use and a non-military end-user where due under contracts concluded before 26 February 2022, or ancillary contracts, provided that the authorisation is requested before 1 May 2022. However, licences (under any licensing ground) will not be granted if the Member State competent authority has reasonable grounds to believe that: (i) the end-user might be military or listed in Annex IV to Regulation 833/2014, or that the goods might have a military end use; or (ii) that the goods or services are intended for aviation or the space industry.

Regulation 2022/328 adds a new article 2a to Regulation 833/2014 prohibiting the supply to Russia or goods and technology that might contribute to Russia's military and technological enhancement or the development or the defence and security sector, as listed in Annex VII. Ancillary prohibitions also apply to the supply of related technical assistance, brokering services, other related services, financing and financial assistance. As is the case with the restrictions on dual-use goods, various exemptions and licensing grounds are available including in particular a licensing ground relating to the performance of pre-existing contracts until 1 May 2022.

The new article 2e to Regulation 833/2014 prohibits the provision of public financing or financial assistance for trade with, or investment in, Russia, with an exemption for: (i) binding financing or financial assistance commitments established prior to 26 February 2022; (ii) public financing or financial assistance up to the total value of €10m per project for EU small and medium-sized enterprises; and (iii) the provision of public financing or financial assistance for trade in food and for agricultural, medical or humanitarian purposes.

New article 3b prohibits the sale or supply to Russia of goods and technology suited for use in oil refining, as listed in Annex X to Regulation 833/2014, along with prohibitions on the supply of related technical assistance, brokering services, other related services, financing or financial assistance, and with an exemption in respect of the execution until 27 May 2022 of contracts concluded before 26 February 2022.

New article 3c prohibits the sale or supply to Russia of goods and technology suited for use in aviation or the space industry, as listed in Annex XI to Regulation 833/2014, along with prohibitions on the supply of insurance or reinsurance in relation to such goods/technology and the following activities: overhaul, repair, inspection, replacement, modification or defect rectification of an aircraft or component (with the exception of pre-flight inspection) in relation to Annex XI goods. As above, the Annex XI restrictions also extend to the supply of related technical assistance, brokering services, other related services, financing or financial assistance and benefit from an exemption in relation to the performance of pre-existing contracts, although this is only available until 28 March 2022.

Additional restrictions on the aviation industry:

In addition to the new trade sanctions in respect of the aviation industry introduced on 25 February (discussed above), Russian air carriers have been banned from EU airspace.

Specifically, Russian air carriers (ie, any air transport undertaking with a valid operating licence or equivalent issued by the competent authorities in Russia), any Russian-registered aircraft and any non-Russian registered aircraft owned or chartered, or otherwise controlled by any Russian person are now prohibited from landing in, taking off from or overflying EU territory following the publication of Regulation 2022/334 28 February (amending Regulation 833/2014).

The prohibition, as set out in a new article 3d, will not apply in case of an emergency landing or emergency overflight, and the competent authorities may authorise an aircraft to land, take-off or overfly the territory of the Union if required for humanitarian purposes or other purposes consistent with the objectives of the Regulation.

DEVELOPMENTS EXPECTED THIS WEEK:

In a joint statement on 26 February, the European Commission, France, Germany, Italy, the UK, Canada and the US announced that certain Russian banks will be excluded from the SWIFT messaging systems, although the identities of these banks have not yet been confirmed. Further developments are expected this week.

Following announcements from the UK on Monday (28 February) and at the end of last week, we expect further restrictive measures to be laid before the UK Parliament and for further designations of individuals and entities to be made, both in respect of Russia and Belarus.

The European Commission President, Ursula von der Leyen, announced on 27 February that the EU will introduce further sanctions in respect of Belarus, and more sanctions in respect of Russia are possible.

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