

## NEW EU SANCTIONS AGAINST RUSSIAN INDIVIDUALS AND ENTITIES MAY AFFECT EUROPEAN OPERATORS

The Council of the European Union has adopted new packages of sanctions in response to the Russian Federation's decision to support and recognise the independence of the Donetsk and Luhansk oblasts and to send troops into Ukraine. These packages considerably broaden the restrictive measures that have been in place since Russia annexed Crimea, and could significantly affect many companies operating in the European Union.

### 1. WHAT HAS BEEN APPROVED?

On 23 February the Council of the European Union adopted a set of decisions and regulations extending the scope of existing restrictive measures against Russia.<sup>1</sup>

- As it did following the annexation of Crimea, the Council has approved measures aimed **at restricting trade relations with the non-government controlled regions**, unless they have the Ukrainian Government's approval.<sup>2</sup>
- The **targeted restrictive measures** are extended to all 351 members of the Russian Duma, who voted to recognise the independence of Donetsk and Luhansk, as well as to specific individuals and entities that, according to the Council, have played a significant role in destabilising the situation in Ukraine. These entities include Russian financial institutions.<sup>3</sup>
- The most politically significant measure of this first set is, undoubtedly, to further **restrict the Russian state's and Government's access to the EU's capital and financial markets** by

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<sup>1</sup> Published in the Official Journal of the European Union (available [here](#)).

<sup>2</sup> Council Decision (CFSP) 2022/266 of 23 February 2022 concerning restrictive measures in response to the recognition of the non-government controlled areas of the Donetsk and Luhansk oblasts of Ukraine and the ordering of Russian armed forces into those areas, and Council Implementing Regulation (EU) 2022/263).

<sup>3</sup> Council Decisions (CFSP) 2022/265 and 2022/267 of 23 February 2022 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, and Council Implementing Regulations (EU) 2022/260 and 2022/261 of 23 February 2022 implementing Regulation (EU) 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.

prohibiting EU operators from (i) directly or indirectly purchasing, selling or providing investment or issuance services, or otherwise dealing with transferable securities and money-market instruments issued by the Russian Government and the Russian Central Bank after 9 March 2022; and (ii) making new loans or credit available to those authorities, although exceptions are provided.<sup>4</sup>

On 25 and 28 February, the Council approved two new packages containing numerous additional restrictive measures:

- The **asset freeze and ban on making economic resources available** was extended to additional natural and legal persons including President Vladimir Putin and his Foreign Minister Sergey Lavrov.<sup>5</sup>
- The existing trade restrictions on military equipment, dual-use goods and goods and technology related to crude oil or petroleum products was expanded to include:<sup>6</sup>
  - Goods and technology which might contribute to enhance Russia's **defence and security sector**, such as electronic components, computers, software, telecommunications and navigation equipment, sensors and lasers.
  - Goods and technology suited for **use in aviation and the space industry**.
  - **Public financing or financial assistance for trade with, or investment in, Russia** (this restriction will not apply in specific cases, such as financing/assistance of up to EUR 10 million per project provided to small and medium-sized enterprises established in the Union).
  - **Related services**, such as technical and financial assistance, which are restricted.<sup>7</sup>

The standard exceptions apply when the trade is carried out for legitimate and pre-determined purposes, such as for humanitarian or medical reasons, or when the recipient is a subsidiary of an EU entity.

- Extending the list of entities banned from engaging in direct or indirect buying or selling, providing investment or issuance services or any other form of trading in transferable securities or similar market or money market instruments.
- The following new prohibitions were included:
  - **Listing and providing services on trading venues** registered or recognised in the Union in relation to the **transferable securities** of any legal person, entity or body established in Russia and with more than 50% public ownership.

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<sup>4</sup> Council Decision (CFSP) 2022/264 of 23 February 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, and Council Implementing Regulation (EU) 2022/262.

<sup>5</sup> Council Decisions (CFSP) 2022/329 and 2022/331 of 25 February 2022 and corresponding implementing regulations.

<sup>6</sup> Council Decision (CFSP) 2022/327 of 25 February 2022 and Council Implementing Regulation (EU) 2022/328.

<sup>7</sup> The judgment of the Court of Justice of 28 March 2017, case C-72/15, *Rosneft*, ECLI:EU:C:2017:236 provides guidance as to what amounts to financial assistance.

- For **central securities depositories** in the Union, providing any services for transferable securities issued after 12 April 2022 to any Russian national or resident.
- Entering into or being a party to an agreement, directly or indirectly, for the purpose of extending new **loans or credit** to listed entities.
- **Selling euro-denominated transferable securities** issued after 12 April 2022 or units in collective investment undertakings providing exposure to such securities to any Russian national or resident.
- **Accepting deposits** from Russian nationals or natural persons residing in Russia, or from legal persons, entities or bodies established in Russia, if the total value of the natural or legal person's, entity's or body's deposits per credit institution exceeds EUR 100,000.
- Transactions relating to the management of the **reserves and assets of the Central Bank of Russia** are prohibited.

There are exceptions and time limits to these measures that should be analysed on a case-by-case basis.

- From the point of view of **international mobility**, in addition to the existing entry bans, provisions of the EU-Russia **visa facilitation agreement have been suspended** and **EU airspace has been closed** to aircraft operated by Russian airlines.

On 1 March, a ban on the provision of specialised financial messaging services to the legal persons listed in the corresponding Council Decision was published, thereby excluding them from the **SWIFT** system.<sup>8</sup>

Finally, on 9 March the Council included additional designated persons subject to financial restrictive measures<sup>9</sup>, added **maritime navigation goods and technology** to the list of products subject to trade restrictions and extended to **crypto assets** the existing restriction regarding transferable securities.<sup>10</sup>

## 2. ARE THESE RESTRICTIVE MEASURES LIKELY TO AFFECT COMPANIES OPERATING IN THE EUROPEAN UNION?

Yes. These measures contain provisions which are addressed not only to the Member States but also to EU operators. In fact, EU operators will be responsible for implementing most of these measures. For example, all EU financial institutions will have to **freeze the assets** of the individuals and entities identified in these decisions. Nor can operators **buy from or sell real estate** to them, as this is deemed to be making funds or economic resources available to them.<sup>11</sup>

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<sup>8</sup> Council Decision (CFSP) 2022/346 of 1 March 2022 and Council Regulation (EU) 2022/345.

<sup>9</sup> Council Decision (CFSP) 2022/397 of 9 March and Council Regulation (EU) 2022/396.

<sup>10</sup> Council Decision (CFSP) 2022/395 of 9 March and Council Regulation (EU) 2022/394.

<sup>11</sup> See judgment of the Court of Justice of the European Union of 11 October 2007, case C-117/06, *Gerda Möllendorf*, ECLI:EU:C:2007:596.

These are just simple examples of how these restrictive measures will apply to **all operators in EU territory**, to **nationals of a Member State** (or entities incorporated under its law), or to any legal person, entity or body in connection with **any business carried out in the EU** in whole or in part.

### 3. CONSEQUENCES OF NOT COMPLYING WITH THE MEASURES

These packages provide that Member States must determine the system of penalties applicable when a restrictive measure is infringed.

In the case of Spain, the legislature has not set out all the penalties in a single piece of legislation. For example, offences related to **trade in goods** are covered by Basic Law 12/1995 of 12 December on the suppression of smuggling, which includes criminal and administrative sanctions, while offences related to **financial restrictive measures** are covered by Law 10/2010 of 28 April on the prevention of money laundering and terrorist financing and its implementing regulations. Note that, under Law 10/2010, the Spanish authorities could hold the **directors and managers** of an offending company liable for the infringement.

### 4. NEXT STEPS

These packages of restrictive measures vis-à-vis the Russian Federation force **EU operators to closely examine their business relations**. It is essential for EU entities to ensure that they are not in breach of any of these measures and, if necessary, to apply for the appropriate authorisations. It should be noted that these packages include a liability exemption clause for cases where European operators were neither aware that their actions might infringe the measures nor had reasonable grounds to suspect that they might do so.

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