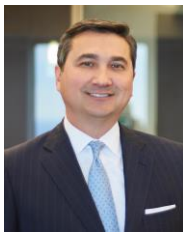


Navigating Sanctions and the Legal Risks of Armed Conflict

By: Mark Beebe and Jeffrey M. Surprenant*



Mark Beebe is a partner at Adams and Reese LLP in New Orleans, Louisiana where he has practiced for thirty-five years in the area of business litigation, including class actions, antitrust, securities, D&O and E&O liability, contract disputes, and education law. He represents and advises multi-national companies, financial institutions, insurance companies, and privately-held businesses.

Since 2007, Mark has been recognized for his work in both commercial litigation and antitrust by Best Lawyers in America® and Louisiana Super Lawyers®. He is also recognized by Chambers in the area of General Commercial Litigation. Mark has been a member of the IADC since 2002 and is the IADC's 2022-2023 President.

Jeffrey M. Surprenant is a litigator and transactional associate at Adams and Reese LLP in New Orleans, Louisiana, USA. Jeff graduated from Loyola University New Orleans College of Law, where he studied under the Civil Law Division and ranked second in his class. While earning his law degree, Jeff was a William L. Crowe Sr. Scholar, a Case Note & Comment Editor on the Loyola Law Review, and a research assistant to one of his professors. Jeff received his undergraduate degree in Accounting, summa cum laude, from Fordham University in New York in 2014.



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WHEN direct military confrontation is off the table, countries instead employ economic sanctions as an alternate tactic to dissuade hostility. Economic sanctions are typically targeted against a country's government, businesses, and even citizens. Sanctions include preventing a government from accessing capital and financial markets, prohibiting companies from exporting or importing goods, and imposing travel bans on a country's citizens.

Commentators and the media usually consider sanctions from a political or economic viewpoint. However, sanctions are the product of domestic and international law, and organizations running afoul of sanctions face legal consequences in excess of the economic impact of their imposition. This article provides a framework to evaluate the threats posed to businesses of sanctions regimes. This article also considers the legal implications under domestic and international law implicated by the armed

conflicts that often give rise to the imposition of sanctions. For the sake of convenience, we use the sanctions regime initiated against Russia following the 2014 annexation of Crimea and 2022 invasion of Ukraine to provide an example of these implications.

I. Recent Sanctions Against Russia

A. How Did the European Union and United States' Sanctions Against Russia Start?

In March 2014, Russia annexed Crimea from Ukraine. Soon thereafter, the European Union and United States issued numerous sanctions against Russian government agencies, businesses, and individuals.¹ These sanctions restricted Russia's access to economic resources, military equipment, and technologies relating to Russia's oil industry. The U.S. further expanded and strengthened its sanctions against

¹ Council Decision 14/145/CFSP of 17 March 2014, 2014 O.J. (L 78), 16; Council Regulation (EU) No 833/2014 of 31 July 2014, 2014 O.J. (L 229), 1; see Exec. Order No. 13,660, 79 Fed. Reg. 13,491 (Mar. 10, 2014); Exec. Order No. 13,661, 79 Fed. Reg. 15,533 (Mar. 19, 2014); Exec. Order No. 13,662, 79 Fed. Reg. 16,167 (Mar. 24, 2014); Exec. Order No. 13,685, 79 Fed. Reg. 77,357 (Dec. 24, 2014).

Russia between 2016 and 2021. The U.S. sanctioned Russia after the 2016 United States Presidential Election.² The U.S. also sanctioned Russian individuals and entities that provided financial and material aid to Syria, Venezuela, and North Korea, as a way to counteract Russia's influence in these countries.³

After Russia recognized the Donetsk People's Republic and Luhansk People's Republic as "breakaway republics" on February 23, 2022, and invaded Ukraine on February 24, 2022, the EU, U.S., United Kingdom, Canada, Japan, South Korea, Taiwan, New Zealand, Australia, and Switzerland subsequently announced a new series of sanctions.⁴ These sanctions incorporate, and expand on, sanctions previously imposed on Russia. As more fully explained below, these sanctions target

individuals and entities that are connected to Russian leadership and its defense and industrial sectors; they severely limit Russia's access to world-wide financial markets; and they prevent Russia from accessing the necessary equipment and technology to maintain its military and industrial economies.

B. Who is Being Sanctioned?

The EU and U.S. levied their sanctions against Russian government agencies, businesses, and individuals. As a result of Belarus' support of Russia's invasion, the EU and U.S. expanded their sanctions to apply to Belarusian entities and individuals.⁵ These sanctions specifically target prominent businesspeople, high ranking officials, military personnel, and

² See Exec. Order 13,757, 82 Fed. Reg. 1 (Jan. 1, 2017); Exec. Order 13,848, 83 Fed. Reg. 46,843 (Sept. 14, 2018); Exec. Order 13,849, 83 Fed. Reg. 48,195 (Sept. 21, 2018); Exec. Order 14,024, 86 Fed. Reg. 20,249 (Apr. 19, 2021).

³ See Exec. Order 13,582, 76 Fed. Reg. 52,209 (Aug. 22, 2011); Exec. Order 13,850, 83 Fed. Reg. 55,243 (Nov. 2, 2018); Exec. Order 13,810, 82 Fed. Reg. 44,705 (Sept. 25, 2017); Exec. Order 13,382, 70 Fed. Reg. 38,565 (July 1, 2005); Exec. Order 13,722, 81 Fed. Reg. 14,941 (Mar. 18, 2016).

⁴ See e.g., Council Implementing Regulation (EU) 2022/332 of 25 February 2022, 2022 O.J. (L 53), 1 (EU); Exec. Order 14,068, 87 Fed. Reg. 14,381 (March 15, 2022) (U.S.); The Russia (Sanctions) (EU Exit) (Amendment) (No. 2) Regulations, 2022

(UK); Regulations Amending the Special Economic Measures (Ukraine) Regulations, (SOR/2014-60) and Customs Notice 22-01 (March 3, 2022) (Canada); Press Release, Ministry of Foreign Affairs, Sanction Measures following the launch of military actions by Russia in Ukraine, (February 25, 2022) (Japan), https://www.mofa.go.jp/press/release/press6e_000371.html; Press Release, Ministry of Foreign Affairs, Korean Government's Decision on Additional Financial Sanctions against Russia, (March 7, 2022) (South Korea), https://www.mofa.go.kr/eng/brd/m_5676/view.do?seq=322012.

⁵ Council Implementing Regulation (EU) 2022/332 of 25 February 2022, *supra* note 4; Exec. Order 14,068, *supra* note 4.

oligarchs reportedly linked to the Kremlin by implementing travel bans and asset freezes. A complete list of individuals and entities named by the EU can be found in the Council Regulation publications of the EU's official journal.⁶ Similarly, the U.S. Office of Foreign Assets Control (OFAC) maintains a searchable database of its most recent Sectoral Sanctions Identifications list on its website.⁷

C. EU-U.S. Sanctions and International Law

The Council of the European Union adopts, renews, or lifts EU sanctions. The European Commission, together with the High Representative, subsequently gives effect to these decisions through joint proposals for Council

regulations, which the Council also adopts. These sanctions apply to every EU national, wherever he or she may be located, and to every company or entity that is incorporated under the law of any EU Member State, including subsidiaries operating outside of the EU. These sanctions apply to people and entities conducting business in the EU and to anyone aboard aircrafts and vessels that are under any EU Member State's jurisdiction. Although the EU issues sanctions, the Member States are the ones responsible for implementing and enforcing them.⁸

United States sanctions are typically imposed under the International Emergency Economic Powers Act ("IEEPA").⁹ Under that statute, the President may, among other things, withhold, transfer, or

⁶ Council Implementing Regulation (EU) 2022/260 of 23 February 2022, 2022 O.J. (L 421), 3; Council Implementing Regulation (EU) 2022/261 of 23 February 2022, 2022 O.J. (L 421), 15; Council Implementing Regulation (EU) 2022/332 of 25 February 2022, *supra* note 4; Council Implementing Regulation (EU) 2022/336 of 28 February 2022, 2022 O.J. (L 58) 1; Council Implementing Regulation (EU) 2022/353 of 2 March 2022, 2022 O.J. (L 66), 1; Council Implementing Regulation (EU) 2022/396 of 9 March 2022, 2022 O.J. (L 80), 1; Council Implementing Regulation (EU) 2022/408 of 10 March 2022, 2022 O.J. (L 84), 2; Council Implementing Regulation (EU) 2022/427 of 15 March 2022, 2022 O.J. (L 871), 1; Council Implementing Regulation (EU) 2022/581 of 8 April 2022, 2022 O.J. (L 110), 3; Council Implementing Regulation (EU) 2022/658 of 21 April 2022, 2022 O.J. (L 120), 1; Council

Implementing Regulation (EU) 2022/878 of 3 June 2022, 2022 O.J. (L 153), 15; Council Implementing Regulation (EU) 2022/1270 of 21 July 2022, 2022 O.J. (L 193), 133; Council Implementing Regulation (EU) 2022/1274 of 21 July 2022, 2022 O.J. (L 194), 5; Council Implementing Regulation (EU) 2022/1354 of 4 August 2022, 2022 O.J. (L 2041), 1.

⁷ This database can be found at: <https://sanctionssearch.ofac.treas.gov/>.

⁸ This merely presents an overview of the applicability of EU sanctions. More information can be found at, European Commission, *Overview of Sanctions and Related Tools*, https://finance.ec.europa.eu/eu-and-world/sanctions-restrictive-measures/overview-sanctions-and-related-tools_en.

⁹ 50 U.S.C. §§1701-1708.

prohibit any property owned by any foreign country or national. To implement these sanctions, the President only needs to declare a “national emergency” based on a threat to the national security, foreign policy, or economy of the United States. United States Presidents have declared two emergencies in this conflict: then-President Barack Obama’s 2014 order issued in response to Russia’s annexation of Crimea (EO 13660), and President Biden’s 2021 order that targets various “harmful foreign activities” of the Russian government (EO 14024). The Office of Foreign Assets Control (“OFAC”), a branch of the U.S. Department of the Treasury, enforces U.S. sanctions.

The United Nations (“UN”) is one of the primary contributors to the development of international law.¹⁰ However, the European

Union and United States sanctions *are not* international law, and the United Nations has not adopted these sanctions against Russia.¹¹ Instead, the UN has voted to suspend Russia from its Human Rights Council and approved a nonbinding resolution which condemns Russia for invading Ukraine and demands that Russia withdraw its military from Ukraine.¹²

II. The Substance of the Sanctions

A. What Types of Goods Are Banned from Being Exported or Imported?

As evidenced by the Group of Seven’s March 11, 2022 statement, the G7 Nations remain “resolved to stand with the Ukrainian people” and present a united front against Russia.¹³ To that end, between

¹⁰ United Nations, *International Law and Justice*, https://www.un.org/en/global-issues/international-law-and-justice#:~:text=Among%20the%20greatest%20achievements%20of,in%20conventions%2C%20treaties%20and%20standards;United+Nations,+Role+of+the+United+Nations+in+International+Law,+2011+Treaty+Event,+Fact+Sheet+#5,https://treaties.un.org/doc/source/events/2011/Press+kit/factsheet_5_english.pdf.

¹¹ Although Article 41 of the United Nations Charter gives the United Nations Security Council the ability to impose sanctions, the United Nations has not imposed any sanctions against Russia, as of yet. See United Nations Security Council, *Sanctions*,

<https://www.un.org/securitycouncil/sanctions/information>.

¹² See also Press Release, United Nations, UN General Assembly votes to suspend Russia from the Human Rights Council, April 7, 2022, <https://news.un.org/en/story/2022/04/1115782> and Peter Granitz and Joe Hernandez, *The U.N. approves a resolution demanding that Russia end the invasion of Ukraine*, NPR, (March 2, 2022), <https://www.npr.org/2022/03/02/1083872077/u-n-set-to-hold-vote-that-would-demand-russia-end-war-in-ukraine>.

¹³ The White House, Joint Statement by the G7 Announcing Further Economic Costs on Russia, Statements and Releases, March 11, 2022, <https://www.whitehouse.gov/briefing-room/statements-releases/2022/>

March 2022 and July 2022, the G7 Nations, Australia, and New Zealand joined together to ban a variety of goods from being exported to Russia and Belarus so as to: (1) cut massive sources of revenue, thereby diminishing Russia's ability to finance and continue the war; and (2) impose relevant economic and political costs on Russian and Belarusian political establishment.

These nations have agreed to prohibit the exportation of the following goods to Russia: cutting-edge technology (including quantum computers, advanced semiconductors, high-end electronics, and software), transportation equipment, certain types of machinery, equipment, and

technology needed for Russia's energy sector, goods relating to Russia's aviation and space industry (such as aircraft, spare parts, or any kind of equipment for planes and helicopters), equipment and technology related to maritime navigation and radio communication, luxury goods, a variety of dual-use goods including drones and encryption devices,¹⁴ and certain goods which could contribute in particular to the enhancement of Russian industrial capacities.¹⁵

The EU and U.S. have also implemented expansive import restrictions on Russian goods. These restricted goods include seaborne coal, seafood, liquor, and luxury items.¹⁶ The EU and U.S.

03/11/joint-statement-by-the-g7-announcing-further-economic-costs-on-russia/.

¹⁴The White House, Joint Statement by the G7 Announcing Further Economic Costs on Russia, Statements and Releases, March 11, 2022, <https://www.whitehouse.gov/briefing-room/statements-releases/2022/03/11/joint-statement-by-the-g7-announcing-further-economic-costs-on-russia/>; Council of the European Union, *EU Sanctions Against Russia Explained*, <https://www.consilium.europa.eu/en/policies/sanctions/restrictive-measures-against-russia-over-ukraine/sanctions-against-russia-explained/>.

¹⁵ Council Regulation (EU) 2022/576 of 8 April 2022, Annex XXIII, 2022 O.J. (L111), 1-66.

¹⁶ Exec. Order 14,066, 87 Fed. Reg. 13,625 (March 10, 2022); Council Decision (CFSP) 2022/430 of 15 March 2022, 2022 O.J. (L 871), 56; Council Regulation (EU) 2022/428 of 15 March 2022, 2022 O.J. (L 871), 13; Council Regulation (EU) 2022/576 of 8 April 2022, *supra* note 15;

have also restricted investment by their citizens in Russia's energy sector. However, the EU and U.S. are not entirely congruent on which items they have banned from Russia. The EU has banned the import of timber from Russia, but the U.S. has not.¹⁷ Similarly, the U.S. has banned the import of Russian oil and natural gas, but the EU allows for the import of pipeline crude oil and natural gas from Russia.¹⁸

B. Key Implications for Various Economic Sectors

The EU and U.S. bans on the import and export of a variety of goods services has significantly

impacted the following sectors of Europe's economy:

1. Technology

Bans on the technology sector have impaired Russia's ability to access the technological goods needed to fuel its economy.¹⁹ Russia's largest car manufacturer, AutoVAZ, now must produce its cars without essential safety parts, like airbags, anti-lock braking systems, and electronic stability control.²⁰ Russia has reportedly had difficulty resupplying its military's weapons and equipment, because two of Russia's major tank plants, Uralvagonzavod Corporation and Chelyabinsk Tractor Plant, have halted work due to the lack of necessary foreign components.²¹

Council Decision (CFSP) 2022/578 of 8 April 2022, 2022 O.J. (L 111), 70.

¹⁷ Exec. Order 14,068, *supra* note 4; Council Regulation (EU) 2022/576 of 8 April 2022, *supra* note 15; Council Decision (CFSP) 2022/578 of 8 April 2022, *supra* note 16. However, Congress introduced legislation to ban timber imports from Russia and Belarus. See No Timber From Tyrants Act, H.R.7437, 117th Cong. (2022), <https://www.congress.gov/bill/117th-congress/house-bill/7437?r=16&s=1>.

¹⁸ Exec. Order 14,066, *supra* note 16.

¹⁹ Statement, President Ursula von der Leyen, Statement by President von der Leyen at the joint press conference with NATO Secretary-General Stoltenberg and President Michel, Feb. 24, 2022.

²⁰ Nick Kostov and Evan Gershkovich, *Iconic Russian Car Maker, Known for Cold War Self-Reliance, Halts Production*, THE WALL ST. J. (Mar. 9, 2022), <https://www.wsj.com/articles/russian-car-maker-known-for-cold-war-self-reliance-idles-factories-11646828796>; Phil McCausland, *Sanctions force Russia to produce popular car without air bags, other safety features*, NBCNEWS (June 14, 2022), <https://www.nbcnews.com/news/world/sanctions-force-russia-produce-popular-car-safety-features-evenkremlin-rcna32863>.

²¹ Press Release, The White House, United States and G7 Partners Impose Severe Costs for Putin's War Against Ukraine, May 8, 2022, <https://www.whitehouse.gov/briefing-room/statements-releases/2022/05/08/fact-sheet-united-states-and-g7->

Almost 1,000 private sector companies have left Russia, and reports indicate that more than 200,000 Russians, many of whom are highly skilled, have left the country.²²

Since Russia annexed Crimea in 2014, Russia has attempted to use to Chinese technology replace Western technology. In 2021, China accounted for 72% of Russia's imports of computers, 72% of Russia's telecommunications equipment, and 56% of Russia's semiconductors.²³ Russia's interdependence with China may continue to strengthen as the sanctions continue.

2. Financial Sector (SWIFT)

Russia and Belarus's access to the global financial markets have also been strained. On February 26, 2022, the United States, EU, United Kingdom, and Canada announced a commitment to ensure that selected Russian and Belarusian banks were removed from the Society for Worldwide Interbank Financial Telecommunications

("SWIFT") messaging system.²⁴ These countries also committed to identifying and freezing the assets of sanctioned individuals and companies that exist within those countries' jurisdictions.

SWIFT is a vast messaging network banks and other financial institutions use to quickly, accurately, and securely send and receive information, such as money transfer instructions. SWIFT has become a crucial part of the global financial infrastructure, and more than 11,000 global SWIFT member institutions sent an average of 42 million messages per day through the network in 2021.²⁵ Although neither the EU nor the U.S. directly controls SWIFT, each can exert influence on its governing body, which is subject to Belgian law.

The U.S., EU, UK, and Canada hoped these sanctions would suppress Russian and Belarusian's economic growth, increase their borrowing costs, raise inflation, intensify capital outflows, and gradually erode their industrial base.²⁶ These SWIFT-related sanctions impede Russian banks from executing their and their

partners-impose-severe-costs-for-putins-war-against-ukraine/.

²² *Id.*

²³ Karen M. Sutter and Michael D. Sutherland, Congressional Research Service, *China's Economic and Trade Ties with Russia*, May 24, 2022, <https://crsreports.congress.gov/product/pdf/IF/IF12120>.

²⁴ Press Release, The White House, Joint Statement on Further Restrictive Economic

Measures, (Feb. 26, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/26/joint-statement-on-further-restrictive-economic-measures/>.

²⁵ SWIFT, *SWIFT FIN Traffic & Figures*, <https://www.swift.com/about-us/discover-swift/fin-traffic-figures>.

²⁶ President Ursula von der Leyen, *Statement, supra* note 19.

customers' financial transactions with foreigners, meeting obligations, receiving payment for exports, or providing short-term credit for imports.²⁷ Although banks may use other transaction methods, such as apps or email, those transactions are not as secure and end up being slower and more costly. These sanctions have had a more immediate impact. Soon after the sanctions were implemented, the ruble was devalued by 30%, and the Russian central bank raised its interest rates to 20%.²⁸ However, the ruble has since recovered due to Russia's strengthening energy sector.

3. Transportation

Sanctions have also had an effect on the transportation sector. The EU has banned the exportation or transfer of any aircraft, aircraft parts, or equipment to Russia. The EU has also closed its airspace to all Russian-owned, registered, or controlled aircrafts. This includes all private jets owned by Russian oligarchs. Similarly, the EU has banned all Russian-flagged vessels from entering any EU port, except

for humanitarian purposes. Finally, the EU has banned all Russian and Belorussian freight road operations working in EU Member States, with the exception of freight operations that are providing essentials such as agriculture, food products, and humanitarian aid.²⁹

Although the EU intended to impose a burden on Russia, these sanctions have also negatively impacted the EU. EU air cargo transportation costs have increased by 120% from pre-invasion levels as a result of these sanctions. Immediate border closures have prevented truck drivers from crossing the Ukrainian border, which has negatively impacted commercial road transport operators and exacerbated rising fuel prices. The maritime sector and ports have also been negatively impacted. Many shipping companies have suspended shipments to and from Russia and Ukraine. Moreover, increased traffic in EU ports have led to additional supply chain issues and heightened security risks at these ports.³⁰

²⁷ Alessandro Rebucci, *SWIFT Sanction on Russia: How It Works and Likely Impacts*, ECONOFACT (Mar. 4, 2022), <https://econofact.org/swift-sanction-on-russia-how-it-works-and-likely-impacts>.

²⁸ Russell Hotten, *Ukraine conflict: Russia doubles interest rate after rouble slumps*, BBC NEWS (Feb. 28, 2022),

<https://www.bbc.com/news/business-60550992>.

²⁹ European Parliamentary Research Service, *Russia's war on Ukraine: Implications for transport*, (June 2022), [https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733536/EPRS_BRI\(2022\)733536_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733536/EPRS_BRI(2022)733536_EN.pdf).

³⁰ *Id.*

4. Energy

Russia's economy is strongly tied to its energy sector, and sanctions by the EU and United States were intended to disrupt that sector of Russia's economy.³¹ However, the results thus far have not been straightforward. Instead, sanctions against Russia have led to an increase in oil prices, resulting in more revenue for Russia. According to the International Energy Agency (IEA), Russia's oil revenue has increased by 50% since the beginning of the year to \$20 billion a month, with the EU representing a large portion of Russia's exports.³² Despite the sanctions currently in place, the IEA reports that Russian oil exports increased by 620,000 bpd in April, rebounding to the January-February average of 8.1

million bpd.³³ During this time, China and India have also increased their imports of Russian oil, further strengthening Russia's energy sector.³⁴

The EU may also be facing an electricity crisis this winter. On August 31, 2022, Russia announced that it was halting the flow of natural gas to Europe through the Nord Stream 1 pipeline.³⁵ Although Russia has claimed this pipeline was experiencing technical difficulties, the Kremlin has indicated that the pipeline may not be resumed until the EU, UK, and Canada roll back their sanctions.³⁶ Russia's position raises concern in Europe. France's Prime Minister Elisabeth Borne has warned that the lack of natural gas could result in rolling two-hour power

³¹ Russia has a 12% market share over the global oil market, and Russia exports almost half of its oil to Europe. J.P.Morgan, *What's Next for Oil and Gas Prices As Sanctions on Russia Intensify*, (March 10, 2022), <https://www.jpmorgan.com/insights/research/oil-gas-energy-prices>.

³² International Energy Agency, *Oil Market Report*, (March 16, 2022), https://iea.blob.core.windows.net/assets/9aea25c1-5450-49db-8e1f-a67c0212720c/-16MAR2022_OilMarketReport.pdf. More recent IEA reports may be found at <https://www.iea.org/topics/oil-market-report>.

³³ International Energy Agency, *Oil Market Report*, (April 13, 2022), https://iea.blob.core.windows.net/assets/eb61211f-1248-4a94-b146-e87e13aa067a/-13APR2022_OilMarketReport_.pdf.

³⁴ See generally, Clyde Russell, *Russian crude is more reliant on India and China, but signs of a peak*, REUTERS (Aug. 9, 2022), <https://www.reuters.com/business/russia-n-crude-is-more-reliant-india-china-signs-peak-russell-2022-08-09/>.

³⁵ See generally, Georgi Kantchev, *Russia Halts Nord Stream Gas Pipeline, Ratcheting Up Pressure on Europe*, THE WALL ST. J. (Aug. 31, 2022), <https://www.wsj.com/articles/russia-halts-nord-stream-gas-pipeline-ratcheting-up-pressure-on-europe-11661933607>.

³⁶ See generally, *Russia delays reopening of Nord Stream in blow to gas-starved Europe*, REUTERS (Sept. 2, 2022), <https://www.reuters.com/business/energy/russia-says-nord-stream-gas-supplies-still-risk-stoking-european-fears-2022-09-02/>.

outages.³⁷ The European Commission has also adopted regulation to voluntarily reduce natural gas demand by 15% this winter, and EU President von der Leyen has also proposed a mandatory reduction in electricity use during peak hours, insisting the EU must “flatten the curve” and avoid peak demands.³⁸

5. Food Security

In addition to heightened concerns relating to public safety, public transportation between borders, and energy shortages, there is a growing concern that the conflict and ensuing sanctions may lead to a global food crisis. Russia and Ukraine are vital agricultural suppliers, and they export nearly 12% of the total calories traded globally. Russia and Ukraine, combined, supply over 50% of the cereal imports in North Africa, the Middle East, and Eastern Africa.³⁹

³⁷ See generally, *French PM warns of potential winter power cuts in homes*, AP NEWS (Aug. 31, 2022), <https://apnews.com/article/russia-ukraine-france-elisabeth-borne-9d86639f99bfef2dcdaec6ec3c8c35f1>.

³⁸ Press Release, Council of the EU, Council adopts regulation on reducing gas demand by 15% this winter, (August 5, 2022), <https://www.consilium.europa.eu/en/press/press-releases/2022/08/05/council-adopts-regulation-on-reducing-gas-demand-by-15-this-winter/>; President Ursula von der Leyen, Statement by President von der Leyen on energy, (Sept. 7, 2022),

Conversely, the EU is largely self-sufficient in a variety of key agricultural products and will only have trouble finding substitutes for limited items, such as sunflower oil and seafood.⁴⁰ Although food security may not be as big an issue for the EU, food affordability might be.

6. Pharmaceutical

Unlike other industries, sanctions levied by the United States, EU, Britain, and Canada against Russia provide specific exceptions or exemptions, depending on the regime, to medicines and medical equipment. Policy experts and company officials stress that the pharmaceutical industry has a humanitarian responsibility to continue supplying these products to Russia and Ukraine.⁴¹ U.S. pharmaceutical and medical companies operated in Russia for

https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_22_5389.

³⁹ European Parliamentary Research Service, *Russia's war on Ukraine: Impact on food security and EU response*, (April 2022), [https://www.europarl.europa.eu/RegData/etudes/ATAG/2022/729367/EPRS_ATA\(2022\)729367_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2022/729367/EPRS_ATA(2022)729367_EN.pdf).

⁴⁰ *Id.*; Press Release, European Commission, Commission acts for global food security and for supporting EU farmers and consumers, March 23, 2022, https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1963.

⁴¹ See e.g., Brianne McGonigle Leyh and Marie Elske Gispén, *Access to Medicines in Times of Conflict*, 20 HEALTH HUM. RIGHTS 237

long before the conflict began. However, now that the conflict has escalated, some companies have begun to issue statements that they will halt or restrict operations in Russia unrelated to essential care.⁴²

Some governments, including the U.S., have emphasized that their sanctions do not target sectors essential to humanitarian activities.⁴³ OFAC expanded the scope of the test of the General License that allows the export of medicines and medical devices to Russia in specific scenarios. Originally, this exemption was limited to activities ordinarily incident and necessary to the exportation or re-exportation of medicines and medical devices.⁴⁴ The scope was later expanded to include activities related to the production, manufacturing, sale, or transport of medicine and medical devices.⁴⁵ The General License also expanded its scope to include

clinical trials. These actions safeguard access to medicines and medical devices for the Russian people. The EU sanctions regimes require an export license for certain materials used in the pharmaceutical industry that are included in the list of goods which could contribute to the enhancement of Russian industrial capacities. The license will be granted for goods with humanitarian purposes. Switzerland's regime is aligned with EU's in this export license exception.

F. Fast-Moving Consumer Goods

The sanctions have also significantly impacted consumer confidence and the fast-moving consumer goods sector in the EU. A majority of EU consumers across the continent now hold a negative

(2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6039728/>.

⁴² See Press Release, Pfizer, Pfizer Updates Company Position in Russia, March 14, 2022, <https://www.pfizer.com/news/press-release/press-release-detail/pfizer-updates-company-position-russia>; Bayer, *Bayer Statement on Ukraine*, updated August 18, 2022, <https://www.bayer.com/en/ukraine>.

⁴³ Press Release, The White House, United States, G7 and EU Impose Severe and Immediate Costs on Russia, Statement and Releases, April 6, 2022, <https://www.whitehouse.gov/briefing-room/statements-releases/2022/04/06/fact-sheet-united-states-g7-and-eu-impose-severe-and-immediate-costs-on-russia/>.

⁴⁴ OFAC, General License 6A: Transactions Related to the Exportation or Re-exportation of Agricultural Commodities, Medicine, Medical Devices, Replacement Parts and Components, or Software Updates, the Coronavirus Disease 2019 (COVID-19) Pandemic, or Clinical Trials (Expired), March 24, 2022, https://home.treasury.gov/system/files/126/russia_gl6a.pdf.

⁴⁵ OFAC, General License 6B: Transactions Related to Agricultural Commodities, Medicine, Medical Devices, Replacement Parts and Components, or Software Updates, the Coronavirus Disease 2019 (COVID-19) Pandemic, or Clinical Trials, July 14, 2022, https://home.treasury.gov/system/files/126/russia_gl6b.pdf.

outlook towards the EU's economy, inflation, and the prospects of a recovery.⁴⁶ This view has been primarily fueled by a drastic increase in prices for groceries, household supplies, clothing, and personal care products. Annual consumer inflation reached a new record of 10.1% in the EU in August 2022.⁴⁷

G. Professional Services

The sanctions also severely disrupted the professional services sector. On June 7, 2022, the United States began prohibiting U.S. persons from providing accounting, trust and corporate formation, and management consulting services to any person in Russia.⁴⁸ The EU issued a similar ban on June 4, 2022.⁴⁹ These services are key to Russian companies and elites

building wealth. Although these bans will undoubtedly harm Russia's financial sector, these sanctions also remove an entire market from U.S. and EU firms that provide these services to Russian businesses and individuals.

H. Ban on New U.S. Investment

On April 6, 2022, President Biden issued Executive Order 14071, which banned any new investments in Russia by any United States persons, wherever they are located.⁵⁰ Although the EO did not explicitly define the term "investment," OFAC has previously interpreted this term broadly to mean any transaction that constitutes a commitment or contribution of funds or other assets or a loan or other extension

⁴⁶ McKinsey & Company, *Survey, European consumers increasingly react to the stress of rising prices*, July 14, 2022, <https://www.mckinsey.com/capabilities/growth-marketing-and-sales/our-insights/survey-european-consumer-sentiment-during-the-coronavirus-crisis>.

⁴⁷ *Annual inflation up to 9.1% in the euro area*, EUROSTAT, September 16, 2022, <https://ec.europa.eu/eurostat/documents/2995521/14698150/2-16092022-AP-EN.pdf/741bf6b2-1643-6ff0-34e7-31522ce1e252>.

⁴⁸ United States Department of Commerce, International Trade Administration, *Professional Services News: United States Bans Certain Services Exports to Russia*, <https://www.trade.gov/feature-article/professional-services-news-united-states-bans-certain-services-exports-russia>.

⁴⁹ European Commission, *Provision of Business Services Related Provision: Article 5n of Council Regulation 833/2014*, June 24, 2022, https://ec.europa.eu/info/sites/default/files/business_economy_euro/banking_and_finance/documents/faqs-sanctions-russia-business-services_en.pdf.

⁵⁰ See also The White House, *A Message to Congress on Prohibiting New Investment in and Certain Services to the Russian Federation in Response to Continued Russian Federation Aggression*, April 6, 2022, <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/04/06/prohibiting-new-investment-in-and-certain-services-to-the-russian-federation-in-response-to-continued-russian-federation-aggression/>.

of credit to an enterprise.⁵¹ Like the ban on professional services, this ban on Russian investment will shut down an entire market for United States firms that were providing these investment options.

I. Russia's Countersanctions?

Russia responded to the sanctions listed above by issuing its own sanctions against 48 countries, including the United States and the EU.⁵² Russia banned the exportation of more than 200 goods, including goods relating to telecommunication, medicine, transportation, agricultural, electrical, and timber. Russia also blocked interest payments to foreign investors with government bonds and banned Russian firms from paying overseas shareholders from "hostile countries". Russia blocked all foreign investors from selling Russian investments in certain key industries such as banking and energy.⁵³ Russia also imposed unofficial sanctions

against the collective West, such as shutting off the Nord Stream 1 pipeline for "maintenance."

III. Practical Considerations

A. Avoiding Running Afoul of the Sanctions

It is important to know who your customer is to avoid the possibility of transacting with a potentially sanctioned entity. Below are some helpful "Red Flags" to be aware of and consider before transacting with a business you are unfamiliar with:

- 1) The customer or its address is similar to one of the parties found on a list of denied persons or entities;
- 2) The customer or purchasing agent is reluctant to offer information about the end-use of the item;

⁵¹ U.S. Department of the Treasury, Office of Foreign Assets Control, *Frequently Asked Questions – Ukraine-/Russia-Related Sanctions*, Oct. 31, 2017, <https://home.treasury.gov/policy-issues/financial-sanctions/faqs/540>.

⁵² *Russia hits back at Western sanctions with export bans*, BBC NEWS, (March 10, 2022), <https://www.bbc.com/news/business-60689279>.

⁵³ *Russia bans Western investors from selling banking, key energy stakes*, REUTERS, (August 5, 2022), <https://www.reuters.com/>

[markets/europe/russia-bans-western-investors-selling-stakes-banks-key-assets-including-sakhakin-2022-08-05/](https://www.reuters.com/markets/europe/russia-bans-western-investors-selling-stakes-banks-key-assets-including-sakhakin-2022-08-05/); *Decree on the application of special economic measures in the financial and fuel and energy sectors in connection with the unfriendly actions of certain foreign states and international organizations*, Instructions of the President, August 5, 2022, <http://kremlin.ru/acts/news/69117> (last accessed October 19, 2022, translated into English using Google translate).

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| <p>3) The product's capabilities do not fit the buyer's line of business, such as an order for sophisticated computers for a small bakery;</p> | <p>8) Routine installation, training, or maintenance services are declined by the customer;</p> |
| <p>4) The item ordered is incompatible with the technical level of the country to which it is being shipped, such as semiconductor manufacturing equipment being shipped to a country that has no electronics industry;</p> | <p>9) Delivery dates are vague, or deliveries are planned for out of the way destinations;</p> |
| <p>5) The customer is willing to pay cash for a very expensive item when the terms of sale would normally call for financing;</p> | <p>10) A freight forwarding firm is listed as the product's final destination;</p> <p>11) The shipping route is abnormal for the product and destination;</p> |
| <p>6) The customer has little or no business background;</p> | <p>12) Packaging is inconsistent with the stated method of shipment or destination; and</p> |
| <p>7) The customer is unfamiliar with the product's performance</p> | <p>13) When questioned, the buyer is evasive and especially unclear about whether the purchased product is for domestic use, for export, or for re-export.⁵⁴</p> |

⁵⁴ This list of "Red Flags" is adapted from the United States Department of Commerce

Performing this type of analysis on the front-end can help clients avoid the aggravation and expense of dealing with the relevant authorities if authorities accused the client of trying to circumvent the sanctions.

More than one sanctions regime may apply to the same transaction. It is important to identify all the entities involved and understand the “nexus” they may have with each jurisdiction to ensure compliance with all applicable sanctions regulations.

B. What to Do If You Are Accused of Attempting to Circumvent the Sanctions

The first approach would be to analyze whether the contract is subject to the “grandfathering in clause” and can be completed without a prior authorization.⁵⁵ If that contract does not fall under that exception, an alternative option would be to see if the contract falls under a relevant exemption under the relevant

sanction. Using the EU’s sanction regime as an example, there are two types of exceptions to the EU’s sanctions: (i) “exemptions,” which are carve-outs from EU sanctions for specific types of goods or activities, and (ii) “derogations,” which are authorizations for specific types of goods or activities that would otherwise be prohibited by EU sanctions.⁵⁶

An exemption is a provision that carves out certain activities from the scope of application of the general prohibition. Exemptions mean that a restriction does not apply when the purpose of the action coincides with the scope of the exemption. As a result, persons falling within the purview of the exemption can carry out the action at hand without any delay. Grounds for exemptions include a firm exporting goods related to humanitarian purposes, medical applications, software updates, and for the execution of contracts entered into prior to the sanctions coming into effect.⁵⁷ Thus,

Bureau of Industry and Security’s “Red Flag Indicators” found at: <https://www.bis.doc.gov/index.php/enforcement/oe/compliance/23-compliance-a-training/51-red-flag-indicators>.

⁵⁵ Some contracts entered into before February 26, 2022 may be completed without prior authorization. *See e.g.*, Council Implementing Regulation (EU) 2022/332 of 25 February 2022, *supra* note 4; Council Implementing Regulation (EU) 2022/336 of 28 February 2022, *supra* note 6.

⁵⁶ Press Release, Council of the EU, EU introduces exceptions to restrictive measures to facilitate humanitarian activities in Ukraine, at n. 1 (April 13, 2022), <https://www.consilium.europa.eu/en/press/press-releases/2022/04/13/eu-introduces-exceptions-to-restrictive-measures-to-facilitate-humanitarian-activities-in-ukraine/>.

⁵⁷ As an additional example, Council Regulation (EU) 2022/1269 of 21 July 2022, 2022 O.J. (L 193), 1, and Council Decision (CFSP) 2022/1271, 2022 O.J. (L 193), 196,

whenever particular activities fall within the scope of an exemption (*i.e.*, humanitarian activities), that firm may carry out the exempted activity without any prior authorization. However, in those scenarios, firms must be able to demonstrate that their activity in question complied with all the conditions required for the exemption to apply. In the EU's Regulations, exemptions are generally phrased along the following lines: “(the prohibitions laid down in) Article... shall not apply to...”.⁵⁸

Conversely, derogations are akin to licenses and apply to prohibited activities that can only be carried out after receiving the proper authorization. This authorization has to be requested from a national competent authority (NCA) of one of the EU

Member States. Moreover, grounds for derogations are narrowed and focused.⁵⁹ Derogations are generally phrased in the EU's Regulations along the following lines: “By way of derogation from the (prohibitions in) Article..., the competent authorities may authorize, under the conditions they deem appropriate...”.⁶⁰

Similarly, the U.S. and UK have also established licensing regimes so that firms can obtain prospective approval before conducting business that may run afoul of U.S. or UK's sanctions. Lastly, U.S. Ambassador Linda Thomas-Greenfield has suggested that the U.S. is prepared to start offering “comfort letters” to shipping and insurance companies relating to the exportation of Russian grain and fertilizer.⁶¹ Thus, companies should consider pursuing these

also allows an exemption from the prohibition to enter into any transactions with Russian public entities necessary to ensure access to judicial, administrative, or arbitral proceedings.

⁵⁸ European Civil Protection and Humanitarian Aid Operations, *Working with DG ECHO Sanctions 2021-2027*, <https://www.dgecho-partners-helpdesk.eu/sanctions/humanitarian-exceptions>.

⁵⁹ For example, Council Regulation (EU) 2022/1273 of 21 July 2022, 2022 O.J. (L 194), 1, allows for a specific derogation from the procedure for freezing assets or banning the provision of funds to individuals and entities on the sanctioned list in cases where those economic resources are being used to prevent threats to food security or to avoid threats to human health, safety, or the environment.

⁶⁰ European Civil Protection and Humanitarian Aid Operations, *supra* note 58.

⁶¹ Linda Thomas-Greenfield, Remarks by Ambassador Linda Thomas-Greenfield at a Press Conference on the Conclusion of the U.S. Presidency of the UN Security Council, May 31, 2022, <https://usun.usmission.gov/remarks-by-ambassador-linda-thomas-greenfield-at-a-press-conference->

prospective measures before conducting any transactions that may increase the company's risk exposure.

feeds, newsletters, podcasts and SMS, so that you may follow EU news in real time.⁶⁷

C. Who Do I Contact?

Companies with questions can contact the EU directly at: relex-sanctions@ec.europa.eu. For United Kingdom licensing, licensing application forms can be found on the Office of Financial Sanctions Implementation's website.⁶² For United States licensing, OFAC's Licensing Division can be reached at (202) 622-2480.⁶³ The Bureau of Industry and Security also maintains a hotline to speak with an export counselor.⁶⁴

IV. Staying Up to Date

For updates relating to new U.S. sanctions, counsel should sign up for alerts from U.S. Department of Treasury.⁶⁵ The White House website also issues statements and releases relating to any new sanctions.⁶⁶ EU institutions and bodies offer numerous free subscription services, such as RSS

[on-the-conclusion-of-the-u-s-presidency-of-the-un-security-council/](#).

⁶² <https://www.gov.uk/guidance/licences-that-allow-activity-prohibited-by-financial-sanctions>. Completed license applications may be submitted to ofsi@hmtreasury.gov.uk.

⁶³ License applications can be submitted online at <https://licensing.ofac.treas.gov/Apply/Introduction.aspx>.

⁶⁴ Available by phone at (202) 482-4811 or by email at ECDOEXS@bis.doc.gov.

⁶⁵ Available at https://public.govdelivery.com/accounts/USTREAS/subscriber/new?topic_id=US_TREAS_1011.

⁶⁶ See <https://www.whitehouse.gov/briefing-room/statements-releases/>.

⁶⁷ See https://europa.eu/newsroom/subscription-services_en#council.eu.