

NAVIGATING SANCTIONS AND THE LEGAL RISKS OF ARMED CONFLICT

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What Are Sanctions?

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.

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

Beginning in March 2014, after Russia annexed Crimea from Ukraine, the European Union ("EU") and United States ("US") 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 US also expanded and strengthened its sanctions between 2016 to 2021. First, the US further sanctioned Russia after the 2016 United States Presidential Election.² Second, the US 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, US, UK, Canada, Japan, South Korea, Taiwan, New Zealand, Australia, and Switzerland subsequently announced a new series of sanctions.⁴ These sanctions incorporate, and expand on, the sanctions that have been 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.

Who is Being Sanctioned?

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

¹ Council Decision 2014/145/CFSP of 17 March 2014; Council Regulation (EU) No 833/2014 of 31 July 2014); *see* Executive Order 13660; Executive Order 13661; Executive Order 13662; Executive Order 13685.

² *See* Executive Order 13757; Executive Order 13848; Executive Order 13849; Executive Order 14024.

³ *See* Executive Order 13582; Executive Order 13850; Executive Order 13810; Executive Order 13382; Executive Order 13722.

⁴ *See e.g.*, Council Implementing Regulation (EU) 2022/332 of 25 February 2022 (EU); Executive Order 14068 (US); The Russia (Sanctions) (EU Exit) (Amendment) (No. 2) Regulations 2022 (UK); Regulations Amending the Special Economic Measures (Ukraine) Regulations and Customs Notice 22-01 (Canada); Sanction Measures following the launch of military actions by Russia in Ukraine (Statement by Foreign Minister HAYASHI Yoshimasa), Press Release, Ministry of Foreign Affairs, February 25, 2022, https://www.mofa.go.jp/press/release/press6e_000371.html (Japan); Korean Government's Decision on Additional Financial Sanctions against Russia, Press Release, Ministry of Foreign Affairs, March 7, 2022, https://www.mofa.go.kr/eng/brd/m_5676/view.do?seq=322012 (South Korea).

⁵ Council Implementing Regulation (EU) 2022/332 of 25 February 2022; Executive Order 14068.

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 US Office of Foreign Assets Control (OFAC) maintains a searchable database of its most recent Sectoral Sanctions Identifications list on its website.⁷

EU-US Sanctions and International Law

EU sanctions are adopted, renewed, or lifted by Council of the European Union. The European Commission, together with the High Representative, subsequently give effect to these decisions through joint proposals for Council regulations, which are also adopted by the Council. 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. Moreover, 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. Lastly, although sanctions are issued by the EU, the Member States are the ones responsible for implementing and enforcing them.⁸

On the other hand, US 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 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 US. Two emergencies have been declared in this conflict: then-President Barack Obama's 2014 order issued in response to Russia's annexation of Crimea (EO 13660), and Biden's 2021 order that targets various "harmful foreign activities" of the Russian government (EO 14024). US sanctions are enforced by the Office of Foreign Assets Control ("OFAC"), a branch of the U.S. Department of the Treasury.

The United Nations ("UN") is one of the primary contributors to the development of international law.¹⁰ However, the EU and US sanctions *are not* international law, and the UN has

⁶ Council Implementing Regulation (EU) 2022/260 of 23 February 2022; Council Implementing Regulation (EU) 2022/261 of 23 February 2022; Council Implementing Regulation (EU) 2022/332 of 25 February 2022; Council Implementing Regulation (EU) 2022/336 of 28 February 2022; Council Implementing Regulation (EU) 2022/353 of 2 March 2022; Council Implementing Regulation (EU) 2022/396 of 9 March 2022; Council Implementing Regulation (EU) 2022/408 of 10 March 2022; Council Implementing Regulation (EU) 2022/427 of 15 March 2022; Council Implementing Regulation (EU) 2022/581 of 8 April 2022; Council Implementing Regulation (EU) 2022/658 of 21 April 2022; Council Implementing Regulation (EU) 2022/878 of 3 June 2022; Council Implementing Regulation (EU) 2022/1270 of 21 July 2022; Council Implementing Regulation (EU) 2022/1274 of 21 July 2022; Council Implementing Regulation (EU) 2022/1354 of 4 August 2022.

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: https://finance.ec.europa.eu/eu-and-world/sanctions-restrictive-measures/overview-sanctions-and-related-tools_en.

⁹ 50 U.S. Code Chapter 35 - International Emergency Economic Powers, <https://www.law.cornell.edu/uscode/text/50/chapter-35>.

¹⁰ International Law and Justice, United Nations Website, https://www.un.org/en/global-issues/international-law-and-justice#:~:text=Among%20the%20greatest%20achievements%20of,in%20conventions%2C%20treaties%20and%20standards;Role%20of%20the%20United%20Nations%20in%20International%20Law,2011%20Treaty%20Event,https://treaties.un.org/doc/source/events/2011/Press_kit/fact_sheet_5_english.pdf.

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

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 March 2022 and July 2022, the G7 Nations, Australia, and New Zealand have 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.

As a result, these nations have agreed to prohibit the exportation of the following goods to Russia: cutting-edge technology (such as 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 A more complete list of the goods that are banned from being exported to Russia and Belarus can be found on the Sanctions Timeline, attached as Attachment One to this paper.

Moreover, the EU and US have also implemented expansive import restrictions on Russian goods. These restricted goods include seaborne coal, seafood, liquor, and luxury items.¹⁶ The EU and US have also limited its citizens from being able to invest in Russia’s energy sector. However, the EU and US are not entirely congruent on which items they have banned from Russia. For instance, the EU has banned the import of timber from Russia, but the US has not.¹⁷ Similarly, the

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

¹² More information can be found at: <https://news.un.org/en/story/2022/04/1115782> and <https://www.npr.org/2022/03/02/1083872077/u-n-set-to-hold-vote-that-would-demand-russia-end-war-in-ukraine>.

¹³ Joint Statement by the G7 Announcing Further Economic Costs on Russia, Statements and Releases, the White House, 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/>.

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¹⁵ Annex XXIII adopted in [Council Regulation \(EU\) 2022/576 of 8 April 2022](#).

¹⁶ (Executive Order 14066); Council Decision (CFSP) 2022/430 of 15 March 2022; Council Regulation (EU) 2022/428 of 15 March 2022; Council Regulation (EU) 2022/576 of 8 April 2022; Council Decision (CFSP) 2022/578 of 8 April 2022.

¹⁷ Executive Order 14068; Council Regulation (EU) 2022/576 of 8 April 2022; Council Decision (CFSP) 2022/578 of 8 April 2022. However, Congress has introduced legislation to ban timber imports from Russia and Belarus. See H.R.7437 - No Timber From Tyrants Act, <https://www.congress.gov/bill/117th-congress/house-bill/7437?r=16&s=1>.

US has banned the import of Russian oil and natural gas, but the EU allows for the importing of pipeline crude oil and natural gas from Russia.¹⁸

Key Implications for Various Economic Sectors

As noted above, the EU and US have banned the import and export of a variety of goods services, which has significantly impacted the following sectors of Europe's economy.

Technology

Starting with the technology sector, these sanctions have impaired Russia's ability to access the technological goods needed to fuel its economy.¹⁹ For instance, it has been reported that Russia's largest car manufacturer, AutoVAZ, now must produce its cars without essential safety parts, such as airbags, anti-lock braking systems, and electronic stability control.²⁰ Similarly, 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 Moreover, 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 Chinese technology replacing 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 Thus, Russia's interdependence with China may continue to strengthen as the sanctions continue.

Financial Sector (SWIFT)

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

¹⁸ Executive Order 14066.

¹⁹ Statement by President von der Leyen at the joint press conference with NATO Secretary-General Stoltenberg and President Michel, Statement by the President, February 24, 2022, https://ec.europa.eu/commission/presscorner/detail/en/statement_22_1332.

²⁰ Iconic Russian Car Maker, Known for Cold War Self-Reliance, Halts Production, The Wall Street Journal, March 9, 2022, <https://www.wsj.com/articles/russian-car-maker-known-for-cold-war-self-reliance-idles-factories11646828796>; 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-evenkremlircna32863>.

²¹ FACT SHEET: United States and G7 Partners Impose Severe Costs for Putin's War Against Ukraine, The White House, Statements and Releases, May 8, 2022, <https://www.whitehouse.gov/briefing-room/statements-releases/2022/05/08/fact-sheet-united-states-and-g7-partners-impose-severe-costs-for-putins-war-against-ukraine/>.

²² *Id.*

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

Telecommunications (“SWIFT”) messaging system.²⁴ Moreover, these countries also made a commitment 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 US directly controls SWIFT, each can exert influence on its governing body, which is subject to Belgian law.

The US, 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 because these SWIFT related sanctions impede Russian banks from executing its and its customers’ financial transactions with foreigners, meeting obligations, receiving payment for exports, or providing short-term credit for imports.²⁷ Further, although banks may use other transaction methods, such as apps or email, those transactions will not be as secure and will end up being slower and more costly. As a result, 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, as discussed below.

Transportation

These sanctions have also had an effect on the transportation sector. For instance, the EU has banned the exportation or transfer of any aircraft, aircraft parts, or equipment to Russia. Further, the EU has 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. Lastly, 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

²⁴ Joint Statement on Further Restrictive Economic Measures, Statements and Releases, The White House, February 26, 2022, <https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/26/joint-statement-on-further-restrictive-economic-measures/>.

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

²⁶ Statement by President von der Leyen at the joint press conference with NATO Secretary-General Stoltenberg and President Michel, Statement by the President, February 24, 2022, https://ec.europa.eu/commission/presscorner/detail/en/statement_22_1332.

²⁷ SWIFT Sanction on Russia: How It Works and Likely Impacts, Alessandro Rebutti, EconoFact, <https://econofact.org/swift-sanction-on-russia-how-it-works-and-likely-impacts>.

²⁸ Ukraine conflict: Russia doubles interest rate after rouble slumps, BBC News, Russell Hotten, February 28, 2022, <https://www.bbc.com/news/business-60550992>.

²⁹ Russia's war on Ukraine: Implications for transport, European Parliamentary Research Service, dated 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).

Although the EU intended to impose a burden on Russia, these sanctions have also negatively impacted the EU. For instance, EU air cargo transportation costs have increased by 120% of pre-invasion level as a result of these sanctions. Similarly, the immediate border closures have prevented truck drivers from crossing the Ukrainian border, which has negatively impacted commercial road transport operators and has exacerbated rising fuel prices. The maritime sector and ports have also been negatively impacted. Because of these sanctions, 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

Energy

Russia's economy is strongly tied to its energy sector, and the sanctions by the EU and US were intended to disrupt that sector of Russia's economy.³¹ However, the results thus far have not been straightforward. Instead, the 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 Further, during this time, China and India have increased their imports of Russian oil, thereby further strengthening Russia's energy sector.³⁴

The EU may also be facing an electricity crisis this winter. Just recently 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 reportedly 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. For instance, France's Prime Minister Elisabeth Borne has warned that the lack of natural gas could result in rolling two-hour power 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

³⁰ *Id.*

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

³² The IEA's March 16, 2022 Oil Market Report may be found at https://iea.blob.core.windows.net/assets/9aea25c1-5450-49db-8e1f-a67c0212720c/-16MAR2022_OilMarketReport.pdf. The IEA's April through August reports may be found at <https://www.iea.org/reports>.

³³ The IEA's April 13, 2022 Oil Market Report may be found at: [https://iea.blob.core.windows.net/assets/eb61211f-1248-4a94-b146-e87e13aa067a/-13APR2022_OilMarketReport .pdf](https://iea.blob.core.windows.net/assets/eb61211f-1248-4a94-b146-e87e13aa067a/-13APR2022_OilMarketReport.pdf).

³⁴ *See, generally*, <https://www.reuters.com/business/russian-crude-is-more-reliant-india-china-signs-peak-russell2022-08-09/>.

³⁵ *See, generally*, Russia Halts Nord Stream Gas Pipeline, Ratcheting Up Pressure on Europe, The Wall Street Journal, August 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, September 2, 2022, <https://www.reuters.com/business/energy/russia-says-nord-stream-gas-supplies-still-risk-stoking-european-fears-2022-09-02/>.

³⁷ *See, generally*, French PM warns of potential winter power cuts in homes, AP News, August 31, 2022, <https://apnews.com/article/russia-ukraine-france-elisabeth-borne-9d86639f99bfef2dcdac6ec3c8c35f1>.

also proposed a mandatory reduction in electricity use during peak hours, insisting the EU must “flatten the curve” and avoid peak demands.³⁸

Food Security

In addition to heightened concerns relating to public safety, public transportation between borders, and energy shortages, there is a growing concern that this conflict and the 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. For instance, Russia and Ukraine, combined, supply over 50% of the cereal imports in North Africa, the Middle East, and Eastern Africa.³⁹

Conversely, the EU is largely self-sufficient in a variety of key agricultural products and will only have trouble finding substitutes for certain 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.

Pharmaceutical

Unlike other industries, the sanctions levied by the US, EU, Britain, and Canada against Russia provide specific exceptions or exemptions, depending on the regime, to medicines and medical equipment. Further, 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 have also operated in Russia for long before the conflict began. However, now that the conflict has escalated, some companies have begun issuing statements saying they will halt or restriction their operations in Russia that are not related to essential care.⁴²

Moreover, some governments, like the US, have expressed that their sanctions do not target sectors essential to humanitarian activities.⁴³ The US OFAC expanded the scope of the test of the General License that allows the export of medicines and medical devise to Russia in specific scenarios. Originally, it was a narrow requirement for activities ordinarily incident and necessary

³⁸ Council adopts regulation on reducing gas demand by 15% this winter, Council of the EU, Press Release, dated 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/>; Statement by President von der Leyen on energy, September 7, 2022, https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_22_5389.

³⁹ Russia's war on Ukraine: Impact on food security and EU response, European Parliamentary Research Service, 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.*; Commission acts for global food security and for supporting EU farmers and consumers, Press Release, March 23, 2022, https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1963.

⁴¹ See e.g., Access to Medicines in Times of Conflict, National Library of Medicine, Brianne McGonigle Leyh, MA, JD, PhD, corresponding author and Marie Elske Gispén, LLM, PhD, dated June 20, 2018, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6039728/>.

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

⁴³ White House Fact Sheet: 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/>.

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 for clinical trials. These actions safeguard access to medicines and medical devices for 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 is for goods with humanitarian purposes. Switzerland's regime is aligned with EU's in this export license exception.

Fast-Moving Consumer Goods

The sanctions have also significantly impacted consumer confidence and the Fast-Moving Consumer Goods sector in the EU. For instance, a majority of EU consumers across the continent hold a negative view towards the EU's economy, inflation, and the prospects of a recovery.⁴⁶ This has been primarily fueled by a perceived drastic increase in prices for groceries, household supplies, clothing, and personal care products. Indeed, annual consumer inflation reached a new record of 10.1% in the EU in August 2022.⁴⁷

Professional Services

The Professional Services sector has also been severely disrupted by these sanctions. On June 7, 2022, the US began prohibiting U.S. persons from providing accounting, trust and corporate formation, and management consulting services to any person in Russia.⁴⁸ The EU also 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 will also remove an entire market from the US and EU firms that provide these services to Russian businesses and individuals.

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.

⁴⁶ European consumers increasingly react to the stress of rising prices, McKinsey & Company, 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 Up to 10.1% in the EU, Eurostat, September 16, 2022, <https://ec.europa.eu/eurostat/documents/2995521/14698150/2-16092022-AP-EN.pdf/741bf6b2-1643-6ff0-34e7-31522ce1e252>.

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

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

Ban on New US Investment

On April 6, 2022, President Biden issued EO 14071 which banned any new investments in Russia by any US persons, wherever they are located.⁵⁰ Although the EO did not explicitly define the term “investment,” the 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 of credit to an enterprise.⁵¹ Similar to the ban on professional services, this ban on Russian investments will shut down an entire market for US firms that were providing these investment options.

What Have Been Russia’s Countersanctions?

As a result of sanctions listed above, Russia has responded by issuing its own sanctions against 48 countries, including the US and the EU.⁵² First, Russia has banned the exportation of more than 200 goods, including goods relating to telecommunication, medicine, transportation, agricultural, electrical, and timber. Second, Russia has blocked interest payments to foreign investors with government bonds and has banned Russian firms from paying overseas shareholders from so called hostile countries. Third, Russia has blocked all foreign investors from selling their Russian investments, in certain key industries such as banking and energy.⁵³ Further, Russia has also imposed unofficial sanctions against the collective West, such as shutting off the Nord Stream 1 pipeline for “maintenance.”

How Can I Avoid 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 to consider before transacting with a business you deem suspicious:

- 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;
- 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;

⁵⁰ See also Prohibiting New Investment in and Certain Services to the Russian Federation in Response to Continued Russian Federation Aggression, The White House, Presidential Actions, 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/>.

⁵¹ Frequently Asked Questions – Ukraine-/Russia-Related Sanctions, U.S. Department of the Treasury, Office of Foreign Assets Control, Sanctions Programs and Information, <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/>; 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> (translated into English using Google translate).

- 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;
- 5) The customer is willing to pay cash for a very expensive item when the terms of sale would normally call for financing;
- 6) The customer has little or no business background;
- 7) The customer is unfamiliar with the product's performance characteristics but still wants the product;
- 8) Routine installation, training, or maintenance services are declined by the customer;
- 9) Delivery dates are vague, or deliveries are planned for out of the way destinations;
- 10) A freight forwarding firm is listed as the product's final destination;
- 11) The shipping route is abnormal for the product and destination;
- 12) Packaging is inconsistent with the stated method of shipment or destination; and
- 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

Performing this type of analysis on the front-end can help you and your company avoid the aggravation and expense of dealing with the relevant authorities if they were to accuse you of trying to circumvent the sanctions.

Further, 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.

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

⁵⁴ This list of “Red Flags” is adapted from the 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 For instance, 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; Council Implementing Regulation (EU) 2022/336 of 28 February 2022.

⁵⁶ EU introduces exceptions to restrictive measures to facilitate humanitarian activities in Ukraine, Press Release, Council of the EU, 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/>.

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, 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 US and UK have also established licensing regimes so that firms can obtain prospective approval before conducting business that may run afoul of US or UK’s sanctions. Lastly, US Ambassador Linda Thomas-Greenfield has suggested that the US 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 prospective measures before conducting any transactions that may increase the company’s risk exposure.

⁵⁷ As an additional example, Council Regulation (EU) 2022/1269 of 21 July 2022 and Decision (CFSP) 2022/1271 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 Working with DG ECHO Sanctions, European Civil Protection and Humanitarian Aid Operations, <https://www.dgecho-partners-helpdesk.eu/sanctions/humanitarian-exceptions>.

⁵⁹ For example, Council Regulation (EU) 2022/1273 of 21 July 2022, 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 and environmental.

⁶⁰ Working with DG ECHO Sanctions, European Civil Protection and Humanitarian Aid Operations, <https://www.dgecho-partners-helpdesk.eu/sanctions/humanitarian-exceptions>.

⁶¹ 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-on-the-conclusion-of-the-u-s-presidency-of-the-un-security-council/>.

Who Do I Contact?

EU

Companies can contact the EU directly at: relex-sanctions@ec.europa.eu. Please see Attachment Two for a list of websites for EU Member States for information on the competent authorities and address for notification to the European Commission.

UK

For licensing, licensing application forms can be found on the Office of Financial Sanctions Implementation's website <https://www.gov.uk/guidance/licences-that-allow-activity-prohibited-by-financial-sanctions>, and completed license applications are then submitted to ofsi@hmtreasury.gov.uk.

US

For licensing, the Office of Foreign Assets Control's Licensing Division can be reached at (202) 622-2480, and license applications can be submitted online at <https://licensing.ofac.treas.gov/Apply/Introduction.aspx>. The Bureau of Industry and Security also maintains a hotline to speak with an export counselor, who can be reached by phone at (202) 482-4811 or by email at ECDOEXS@bis.doc.gov.

How Do I Stay Up to Date?

For updates relating to new US sanctions, you can sign up for alerts from U.S. Department of Treasury at https://public.govdelivery.com/accounts/USTREAS/subscriber/new?topic_id=USTREAS_1011. The White House website will also issue statements and releases relating to any new sanctions which can be found at <https://www.whitehouse.gov/briefing-room/statements-releases/>. Similarly, the EU institutions and bodies offer numerous free subscription services, such as RSS feeds, newsletters, podcasts and SMS, so that you may follow EU news in real time, which can be found here: https://europa.eu/newsroom/subscription-services_en#council.eu.

ATTACHMENT ONE
Sanctions Timeline

ATTACHMENT TWO

EU Member States Contact Information

Belgium - https://diplomatie.belgium.be/nl/Beleid/beleidsthemas/vrede_en_veiligheid/sancties; https://diplomatie.belgium.be/fr/politique/themes_politiques/paix_et_securite/sanctions; https://diplomatie.belgium.be/en/policy/policy_areas/peace_and_security/sanctions.

Bulgaria - <https://www.mfa.bg/en/101>.

Czech Republic - www.financnianalytickurad.cz/mezinarodni-sankce.html.

Denmark - <http://um.dk/da/Udenrigspolitik/folkeretten/sanktioner/>.

Germany - <http://www.bmwi.de/DE/Themen/Aussenwirtschaft/aussenwirtschaftsrecht,did=404888.html>.

Estonia - http://www.vm.ee/est/kat_622/.

Ireland - <http://www.dfa.ie/home/index.aspx?id=28519>.

Greece - <http://www.mfa.gr/en/foreign-policy/global-issues/international-sanctions.html>.

Spain - <http://www.exteriores.gob.es/Portal/en/PoliticaExteriorCooperacion/GlobalizacionOportunidadesRiesgos/Paginas/SancionesInternacionales.aspx>.

France - <http://www.diplomatie.gouv.fr/fr/autorites-sanctions/>.

Croatia - <http://www.mvep.hr/sankcije>.

Italy - https://www.esteri.it/mae/it/politica_estera/politica_europea/misure_deroghe.

Cyprus - http://www.mfa.gov.cy/mfa/mfa2016.nsf/mfa35_en/mfa35_en?OpenDocument.

Latvia - <http://www.mfa.gov.lv/en/security/4539>.

Lithuania - <http://www.urm.lt/sanctions>.

Luxembourg - <https://maee.gouvernement.lu/fr/directions-du-ministere/affaires-europeennes/organisations-economiques-int/mesures-restrictives.html>.

Hungary - <https://kormany.hu/kulgazdasagi-es-kulugyminiszterium/ensz-eu-szankcios-tajekoztato>.

Malta - <https://foreignaffairs.gov.mt/en/Government/SMB/Pages/Sanctions-Monitoring-Board.aspx>.

Netherlands - <https://www.rijksoverheid.nl/onderwerpen/internationale-sancties>.

Austria - http://www.bmeia.gv.at/view.php3?f_id=12750&LNG=en&version.

Poland - <https://www.gov.pl/web/dyplomacja>.

Portugal - <http://www.portugal.gov.pt/pt/ministerios/mne/quero-saber-mais/sobre-o-ministerio/medidas-restritivas/medidas-restritivas.aspx>.

Romania - <http://www.mae.ro/node/1548>.

Slovenia - http://www.mzz.gov.si/si/omejevalni_ukrepi.

Slovakia - https://www.mzv.sk/europske_zalezitosti/europske_politiky-sankcie_eu.

Finland - <http://formin.finland.fi/kvyhteisty/pakotteet>.

Sweden - <http://www.ud.se/sanktioner>.