

The Dynamic Nature of EU Sanctions Against Russia: A Continuous Compliance Challenge

Sanctions against Russia, particularly under European Union Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (Regulation), are an evolving set of restrictions that require ongoing monitoring by compliance teams as the EU continuously adapts and expands these restrictions, including in response to countermeasures continuously developed by the Russian government. The Regulation has been amended 19 times since February 2022 and is on its 14th package of sanctions.

Unlike other sanctions regimes, where business compliance may become routine once internal policies and know your customer (KYC) procedures are in place, the Russian sanctions regime requires ongoing monitoring of (1) government measures in multiple jurisdictions, including in Russia, and (2) developing of new trade patterns and parallel markets. A substantial position of Russian commodities, particularly oil and gas, in global commodities markets allows Russian exporters to form alternative supply chains and grow alternative markets, which reduces the effectiveness of sanctions and prompts further restrictions to address circumvention. The EU's latest package of sanctions, adopted on 24 June 2024, introduced steps to prevent sanctioned entities from circumventing restrictions, allowing EU operators to claim damages for sanctions enforcement, and prohibiting transactions with listed entities.

This dynamic environment places increasing pressure on compliance teams to actively monitor multijurisdictional regulatory updates, adjust and/or implement KYC and know your cargo procedures, and do regular screenings and re-screenings for new risks or prohibited sectors. Enhanced due diligence is required, especially for businesses operating in high-risk industries, as outlined in recent EU guidance on sanctions compliance. This includes identifying circumvention risks, performing strategic risk assessments, and applying best practices in reviewing new business partners, transactions and goods. In this fast-changing sanctions environment, compliance is an ongoing, proactive process that requires substantial internal compliance resources or support of external advisers.

Moreover, the EU has emphasised the importance of anticircumvention measures, urging companies to remain vigilant, particularly when conducting exports or financial transactions that may indirectly involve or pose a risk of re-exportation to Russia or Belarus. Failure to maintain an updated and robust compliance programme could expose companies to significant legal and financial risks, given the heavy focus on enforcement and anticircumvention within the evolving sanctions framework.

Across the EU, the enforcement of sanctions has become stricter, underscored by the adoption of Directive (EU) 2024/1226 on the definition of criminal offences and penalties for the violation of Union restrictive measures and amending Directive (EU) 2018/1673 (Directive), aimed at harmonising enforcement and penalty standards for violations of EU sanctions across the EU. It establishes consistent definitions of criminal offences related to breaches of sanctions, ensuring that violations, including attempts to circumvent restrictions and noncompliance with authorisation conditions, are treated seriously. For instance, violations committed with gross negligence can now be classified as criminal offences, leading to more severe repercussions. The Directive establishes minimum penalties for individuals, mandating maximum prison sentences of at least five years for certain serious crimes, with lesser offences requiring a minimum of one year of imprisonment and fines starting at €100,000. Legal entities face even stricter penalties, which range from 1% to 5% of their total worldwide turnover or fixed monetary amounts between €8 million and €40 million, depending on the specific offence.

Recent enforcement actions illustrate the EU's commitment to these stricter measures. For example, on 3 October 2024, a Dutch exporter was sentenced to two years and eight months in prison for exporting over 460 sanctioned aircraft parts to Russian companies. This case also resulted in the confiscation of €250,000 and the forfeiture of all stock-in-trade and business bank accounts, highlighting the serious financial consequences of noncompliance. Similarly, a Lithuanian car export company was fined €13.6 million for violating EU sanctions in September of this year, and the Dutch construction equipment supplier Dieseko Group BV faced a nearly €1.8 million fine for participating in the construction of the Crimean Bridge. These cases underscore the heightened scrutiny and enforcement efforts within the EU, making it imperative for companies to implement robust compliance measures. As the regulatory landscape evolves, businesses should remain vigilant, adapting their practices to navigate this stricter environment and mitigate legal and financial risks associated with sanctions violations.

Russia's Countermeasures Require Ongoing Monitoring

In response to sanctions, Russia has been actively developing countersanctions measures since 2014. Russian countermeasures are predominantly enacted by presidential decrees, with details of implementation set out in government regulations. More recently, Russian countermeasures expanded to include a variety of legislative novelties such as introducing article 248 to the *Arbitrazh* Procedure Code of the Russian Federation to grant Russian commercial (i.e. *Arbitrazh*) courts exclusive jurisdiction over disputes where the dispute arises from sanctions imposed on Russian entities or individuals, or the proceedings involve a sanctioned person, as well as executive level acts to effectively take control over companies deemed of national interest for the Russian Federation.

Recent court cases where article 248 to the *Arbitrazh* Procedure Code was invoked include the seizure by Russian courts of US\$155.8 million of JPMorgan Chase funds, based on court filings introduced by state-owned VTB bank, in response to damages caused by the blocking of VTB funds abroad, and a Russian court order to freeze around US\$1.15 billion worth of assets of a British subsidiary of German industrial gases company Linde, in a dispute with Ruschemalliance over a gas processing plant.

A couple of notable examples of the president's executive orders to take effective control over companies are the placing of shares of Carlsberg Group and Danone under Russian management and placing Glavproduct Holding (reported to be owned by the US-based Universal Beverage Company) under temporary management.

As part of the countermeasures implemented by Russian authorities under the Compensation Protocol in response to the Unfriendly Acts of the US (Protocol), Russian individuals can approach Russian courts to claim that they have been unfairly deprived of their property rights due to decisions made by US state or judicial bodies. Through this Protocol, Russian "rights holders" can seek compensatory damages from any property owned by US persons, including individuals, within Russia.

As sanctions pressure mounts, a multitude of legislative changes and executive level regulations continue to develop in Russia. Recently, new requirements for foreign companies seeking to exit the Russian market and wind down their operations were introduced, including:

- An increase in the "voluntary" contribution that foreigners will have to pay to the budget when selling a Russian business was raised from 15% to 35% of the market value. Of this amount, 25% of the transaction's value must be paid to the budget within the first month of approval by authorities, 5% within a year and an additional 5% within two years after that approval.
- The compulsory discount to the market value of the asset for such transactions has been increased from 50% to 60% of their real price.
- These changes effectively leave the exiting foreign investor with only 5% of the value of the company they are winding down.

In addition, winding down transactions equivalent to ₪50 billion or more (approximately €495 million) can be completed only with the approval of President Vladimir Putin. Such transactions may also increase the risk that companies could face additional risks of "nationalisation" as noted above.

These new requirements apply retrospectively to transactions that have already been submitted but are still pending special commission approval.

Perhaps contrary to expectations of some wholesale nationalisation, the Russian government has adopted a selective approach in targeting foreign assets and crafting jurisprudence around those assets accordingly. The sheer size of the body of this jurisprudence reflects the scale and complexity of issues that compliance teams of businesses exposed to Russia need to consider.

EU Measures to Protect Foreign Entities Affected by the Latest Russian Measures

On 24 June 2024, the EU implemented its latest package of sanctions against the Russian Federation (the 14th package), by implementing changes to the existing Regulation.

Among the multiple new measures, the EU has implemented a new mechanism, covered by Article 11a of the Regulation. This mechanism allows any natural or legal person, entity or body inside or outside the territory of the EU – who is a national of or constituted under the laws of a member state – to seek damages resulting from claims lodged by any Russian person, entity or body before the courts of third countries (including the courts of the Russian Federation), in connection to contracts or transactions that were affected directly or indirectly by the Regulation.

The interpretation of the article does not provide any criteria or requirements to be met in order to be entitled for compensation for losses, nor does it clarify the amount of compensation to which EU operators may be entitled. However, when considered broadly, it potentially opens the door for EU operators to be able to claim losses incurred as a result of lodged claims. These losses, resulting from Russian sanctions countermeasures, could be considered as indirectly related to EU Regulation.

Our team of sanctions lawyers across relevant jurisdictions, including the EU, the US, the UK and Australia, supported by Russian-qualified lawyers, is able to offer comprehensive sanctions compliance support.

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