

## **RESTRICTIVE MEASURES TAKEN BY THE EU AGAINST RUSSIA**

### **PART THREE - FINANCIAL ASPECTS**

*March 3, 2022*

**In this third note we analyse the financial sanctions that the EU institutions have imposed against the Russian Federation in response to the military invasion of Ukraine. These are undoubtedly the most severe sanctions agreed against a state in recent times, as the European measures join those of many other countries, with the United States and the United Kingdom leading the way. Surely for the first time in history, economic weapons are being used to end a war as soon as possible.**

The consequences have been felt almost immediately: companies such as VISA, Mastercard and Apple have announced that they are suspending all their payment services in Russia; major Russian banks have been forced to abandon their operations in Europe; and prominent figures are facing serious obstacles to managing their assets, the freezing of their assets or the seizure of their property located in EU territory. The scope of the measures is such that ordinary Russian citizens are also being affected.

#### **Initial freezing of funds and prohibition on making them available**

As we have seen in the notes of previous days, most of the sanctioning measures have their origin in Council Decision 2014/145/CFSP and Regulation (EU) 269/2014, both of 17 March 2014, and were motivated by the annexation of Crimea. At that time, the European Union ordered the freezing of all funds and economic resources belonging to, owned, held or controlled, directly or indirectly, by natural or legal persons, entities or bodies identified on the blacklist annexed to those regulations (a list that has been regularly updated). It was also prohibited to make funds and economic resources available, directly or indirectly, to or for the benefit of such persons.

It should be noted that the concepts of "economic resources" and "funds" are drafted very broadly. "Funds" means financial assets and benefits of every kind, such as: (i) cash, cheques, claims on money, drafts, money orders and other payment instruments, (ii) deposits with financial or other institutions, balances on accounts, debts and debt obligations, (iii) publicly and privately traded securities and debt instruments, such as stocks and shares, certificates representing securities, bonds, notes, warrants, (iv) interest, dividends or other income earned on or generated by assets, (v) credit, right of set-off, guarantees, performance bonds or other financial commitments, (vi) letters of credit, bills of lading and bills of sale, and (vii) documents evidencing an interest in funds or financial resources. "Economic resources" are assets of every kind, whether tangible or intangible, movable or immovable, that are not funds but can be used to obtain funds, goods or services.

The freezing of funds obliges those to whom the rule is addressed to prevent any move, transfer, alteration, use of, access to, or dealing with funds in order to obtain a change in their volume, amount, location, ownership, possession, character, destination or

other change that would enable the funds to be used, including portfolio management. The freezing of economic resources is intended to prevent the use of those resources to obtain funds, goods or services, including, but not limited to, the selling, hiring or mortgaging of those resources.

As can be seen, the inclusion of any person on the list of persons to whom restrictive measures are directed can have serious financial and economic consequences. For this reason, Community legislation provides for certain situations in which the competent authorities of the Member States may authorise the release of frozen funds or economic resources or the making available of funds or economic resources. The person concerned may request such a release of funds or economic resources if he or she can demonstrate that such funds or economic resources are available:

- a. are necessary to meet their basic needs and those of their dependants (payment of food, rent or mortgage, medicines and medical treatment, taxes, insurance premiums and utility charges),
- b. are intended exclusively for the payment of reasonable professional fees and reimbursement of expenses incurred in the provision of legal services,
- c. intended exclusively for payment of fees or service charges for routine holding or maintenance of frozen funds or economic resources; or
- d. under certain circumstances, are necessary for extraordinary expenses.

The release of frozen funds or economic resources may also be permitted when:

- i. those funds or economic resources are the subject of an arbitral award rendered before the date on which the person was listed, or of a judicial or administrative decision rendered in the EU or of a judicial decision enforceable in the Member State concerned, before or after that date,
- ii. those funds or economic resources are to be used exclusively for the satisfaction of claims secured by, or recognised as valid in, that decision,
- iii. provided that the decision does not benefit a blacklisted natural or legal person, entity or body, and
- iv. recognition of the judgment is not contrary to public policy in the Member State concerned.

#### **Initial prohibitions on financial instruments**

Since 2014, it has also been prohibited to directly or indirectly buy or sell or provide investment or issuance assistance services or any other form of trading in bonds, debentures, shares or similar financial instruments issued by certain legal persons listed in several blacklists.

A first list essentially enumerates

- a. large credit or financial development institutions established in Russia, more than 50 % owned or controlled by the Russian State,
- b. any legal person, entity or body established outside the EU and more than 50 % owned by a blacklisted entity, and
- c. any legal person, entity or body acting on behalf or at the direction of a blacklisted or listed entity.

A second list includes:

- i. entities established in Russia engaged predominantly and with significant activities in the design, production, sale or export of military equipment or services,
- ii. entities established in Russia subject to public control or with more than 50 % public ownership, which have total estimated assets exceeding 1 trillion Russian roubles and whose estimated revenues derive at least 50 % from the sale or transportation of crude oil or petroleum products,
- iii. any legal person, entity or body established outside the Union which is more than 50 % owned by any of the foregoing entities, and
- iv. any legal person, entity or body acting on behalf or at the direction of a blacklisted or blacklisted entity.

### **Financial operations**

Within the broad framework of agreed sanctions, financing operations through loans or credits were also included. Thus, the conclusion of agreements, directly or indirectly, for the purpose of granting new loans or credits to blacklisted persons is prohibited, subject to certain exceptions. Direct or indirect purchase or sale transactions, provision of investment services or assistance in issuance, or any other form of negotiation, in relation to negotiable securities or similar market or money market instruments with a maturity of more than 90 days, issued by blacklisted persons, were also prohibited.

### **Extension of prohibitions to other funds and financial instruments**

On 23 February 2022, Council Decision (CFSP) 2022/264 and Council Regulation (EU) 2022/262 added new instruments to the list of prohibited financial transactions in order to prevent the financing of Russia, its government and the Russian Central Bank. Since the entry into force of these rules, the purchase, sale, provision of investment services or assistance in the issue or trading of transferable securities and financial instruments with Russia and its government, the Central Bank of Russia or any entity acting in the name or on behalf of the Central Bank of Russia is prohibited. It is also prohibited to enter into or be a party to agreements, directly or indirectly, for the purpose of extending new loans or credits to such bodies, subject to certain limited exceptions.

In view of the escalation of events and the lack of a positive reaction from the Russian government, Council Decision (CFSP) 2022/335 of 28 February banned transactions relating to the management of the reserves and assets of the Central Bank of Russia, including transactions with any legal person, entity or body acting on behalf of or at the direction of the Central Bank of Russia. In practice, this measure has led to the immobilisation of the Russian Central Bank's vast reserves of foreign currency and gold, and has reportedly led to a significant fall in the rouble, the temporary closure of the Moscow Stock Exchange and concern among the Russian public.

On 1 March, Council Decision (CFSP) 2022/346 and Council Regulation (EU) 2022/345 introduced new restrictive measures:

- a. prohibition on the provision of specialised financial messaging services, used to exchange financial data, to the legal persons, entities or bodies listed in the Annexes to that Decision (Bank Otkritie, Novikombank, Promsvyazbank, Bank Rossiya, Sovcombank, Vnesheconombank (VEB) and VTB Bank);
- b. a prohibition on the sale, supply, transfer or export of euro banknotes to Russia or to any legal person, entity or body in Russia, including the Government and the Central Bank of Russia, or for use in Russia, other than for the personal use of travellers to Russia or for the official purposes of diplomatic missions, consular posts or international organisations to which Russia enjoys immunity;
- c. prohibition to invest or participate in or otherwise contribute to projects co-financed by the Russian Direct Investment Fund.

#### **Specific prohibitions relating to conflict zones**

The EU legislator has also issued a series of measures aimed at preventing certain business transactions in the Donetsk and Luhansk areas, on the grounds that they are likely to conceal prohibited financing operations. Indeed, since the entry into force of Council Decision (CFSP) 2022/266 and Council Regulation (EU) 2022/263 of 23 February, the following legal transactions have been prohibited:

- a. the acquisition of real estate or the extension of participation in real estate in the areas of Donetsk and Luhansk not controlled by the Ukrainian government,
- b. the acquisition of entities or the extension of participation in entities in such areas, including the acquisition of shares and other securities of a participating nature,
- c. the granting of any kind of loan, credit or other financing to entities in the above areas,
- d. the creation of joint ventures with entities in these areas,
- e. the provision of investment services directly related to the related activities.

### **Forthcoming chapters**

This note concludes our first summary of the EU's sanctions measures against Russia and Belarus, in which we have sought to provide an overview of the main aspects to be taken into account. However, this is a matter in constant flux, as the authorities continue to adapt and modify existing sanctions on an almost daily basis. Indeed, since the publication of the first two chapters, some measures have already been extended to certain individuals and economic sectors in Belarus because of its active participation in the war. For this reason, we will analyse the impact that the agreed measures are having on certain industrial sectors and provide updates to this first set of notes in forthcoming commentaries.

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