

RESTRICTIVE MEASURES TAKEN BY THE EU AGAINST RUSSIA

PART TWO – COMMERCIAL ASPECTS

March 2, 2022

We continue our series of notes aimed at summarising the main sanctioning measures adopted by EU institutions against the Russian Federation as a consequence of the military invasion of Ukraine. In this chapter we will focus on the trade restrictive measures that have been added to those already in place since 2014 as a consequence of the annexation of Crimea.

Tourist activities in Donetsk and Luhansk regions

By Council Decision (CFSP) 2022/266 of 23 February it was agreed to prohibit the provision of services directly related to tourism activities in the areas not controlled by the Ukrainian government (Donetsk and Luhansk regions) by nationals of Member States or from the territory of Member States, or using vessels or aircraft under the jurisdiction of Member States. As a result, European travel agencies cannot promote these areas as tourist destinations or provide booking services for flights, hotel accommodation, etc.

Closure of European airspace to Russian aircraft

One of the measures that has attracted most attention in the media has been the announcement by the European Union to ban Russian aircraft from landing, taking off and flying over EU territory. Similar measures have been taken by the United States of America, Canada, the United Kingdom and other countries.

This restriction was formalised on 28 February by Council Decision (CFSP) 2022/335 and Regulation (EU) 2022/334, which prohibited aircraft operated by Russian air carriers (including carriers operating under code-sharing or capacity reservation agreements), aircraft registered in Russia or aircraft not registered in Russia but owned, chartered or otherwise controlled by Russian natural or legal persons, entities or bodies from landing on, taking off from or flying over the territory of the EU.

By way of derogation, and as provided for in international aviation law, the ban does not apply to cases where an aircraft is required to make an emergency landing or overflight. In addition, Member States have the power to authorise the operation of flights that are necessary for humanitarian purposes.

In this way, flights operated by Russian airlines, whose main market is Europe, are banned until the measure is lifted. Russia has responded by closing its airspace to three countries, including Spain.

Sales of armaments and dual-use goods

Measures issued in 2014 already prohibited the sale, supply, transfer or export, directly or indirectly, of arms and related materiel of all types, including weapons and ammunition, military vehicles and military and paramilitary equipment, and spare parts for the aforementioned, to Russia. A similar measure had been put in place in 2012 with regard to arms sales to Belarus.

Also the purchase, supply, transfer or export, directly or indirectly, of dual-use items and technology to Russia for military use or to any military end-user in Russia has been banned since 2014. This ban was further extended to listed persons and entities in Russia. However, certain sales of dual-use items and technology for the aviation and space industry, for non-military use and to non-military end-users, were exempted from this ban.

In our experience, identifying whether an item or technology qualifies as a dual-use material is particularly difficult. In general, dual-use is defined as items, including software and technology, that can be used for both civilian and military or nuclear purposes. It is essential to refer to the consolidated list contained in Annex I of Council Regulation (EC) 428/2009, as amended by Commission Delegated Regulation (EU) 2019/2199, which is updated on a regular basis. It should be noted that the list includes products and materials that might seem innocuous in principle, such as software, microcircuits, telecommunication equipment, certain types of drones, etc.

Sales of products and services related to oil exploration and extension to other sectors

Similarly, since 2014, the direct or indirect sale, supply, transfer or export of certain oil exploration and production equipment in Russia was subject to prior authorisation by the exporting Member State. This restriction affected the following categories of projects, for which the provision of services was also prohibited:

- > oil exploration and production in waters deeper than 150 metres,
- > oil exploration and production in waters north of the Arctic Circle,
- > projects with a potential to produce oil from resources located in shale formations by means of hydraulic fracturing, excluding exploration and production through shale formations for the purpose of locating or extracting oil from non-shale reservoirs

The above restrictions were extended on 23 February by Council Decision (CFSP) 2022/266 and Council Regulation 2022/263. These rules have prohibited the sale, supply, transfer or export of certain goods or related technology in an annex to any natural or legal person, entity or body in, or for use in, the Donetsk and Luhansk areas not controlled by the Ukrainian government in the following sectors: transport, telecommunications, energy, prospecting, exploration and production of oil, gas and mineral resources. Technical assistance, brokering, training and other services in these goods and financing or financial assistance have also been prohibited. It should be noted

that this prohibition applies irrespective of whether the goods originate in Community territory or not.

Similarly, the new restrictions prevent the provision of technical assistance, or brokering, construction or engineering services directly related to infrastructure in the Donetsk and Luhansk areas, regardless of the origin of the goods or technology. There is no doubt that this limitation may be a major impediment to efforts to reconstruct buildings and infrastructure damaged as a result of the armed clashes.

Imports of goods originating in the conflict zones

Whereas the restrictions had hitherto been imposed in relation to the sale of certain types of goods and services to Russian entities and individuals, the new package of measures extends them to the import of goods originating in the conflict zones.

Since 23 February, the above-mentioned Council Decision (CFSP) 2022/266 and Council Regulation 2022/263 have imposed a general ban on the import into the European Union of goods originating in the areas of Donetsk and Luhansk not controlled by the Ukrainian government. It has also been prohibited to provide, directly or indirectly, financing or financial assistance, as well as insurance and reinsurance, in connection with the import of goods originating in the abovementioned areas.

Exempted from this general prohibition are goods which have been made available for examination by the Ukrainian authorities, have been checked by them and have obtained a certificate of origin from the Ukrainian government. The aim is to prevent goods originating in the above areas from benefiting from the preferential tariff treatment provided for in the EU-Ukraine Association Agreement and to prevent products being imported into the EU from countries neighbouring Ukraine, in particular from Russia and Belarus.

Aware that the armed conflict that is ongoing at the time of writing may make it difficult for the Ukrainian authorities to carry out appropriate controls, the EU institutions regularly publish notices to European importers, which should be taken into account. To date, these announcements advise EU operators not to claim preferential treatment for the import of goods produced in the conflict zones and to check very carefully the real origin of the goods they declare (in particular coal and steel products). The Community authorities have expressly warned that the release for free circulation of such goods imported from Russia and Belarus may be made conditional on the presentation to customs of conclusive evidence that these goods are not affected by the ban on imports of goods originating in the conflict zones.

Emissions ban

Despite repeated calls by the international community for a cessation of hostilities, EU bodies have noted that the Russian government uses certain Russian media as propaganda tools, in violation of the obligation to respect fundamental rights, freedoms and principles recognised in the EU.

Against this background, by Decision (CFSP) 2022/351 and Council Regulation (EU) 2022/350 of 1 March, it has been agreed to prohibit all Community operators from broadcasting, allowing, facilitating or otherwise contributing to the broadcasting of any content by the Russia Today and Sputnik channels on any channel. This includes transmission or distribution by any means such as cable, satellite, IP-TV, internet service providers, internet video-sharing platforms or applications, whether new or previously installed. In addition, all broadcasting licences and authorisations, transmission and distribution agreements with Russia Today and Sputnik have been suspended.

Forthcoming chapters

In the next chapter we will analyse in some detail the financial sanctions, imposed in relation to the freezing of funds of blacklisted persons, the limitations on financial instruments and transactions, and some of the effects that are already taking place.

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