



Orth Kluth Newsletter

EU sanctions against Russia

As a result of the Russian Federation's attack on the territory of Ukraine in violation of international law, the European Union and its international partners have imposed significant economic and financial sanctions against Russia.

The resulting economic situation creates uncertainty for many companies, which face the challenge of structuring their economic business activities to comply with sanctions in the short term.

In this article, we present an overview of the sanctions adopted by the EU and also suggest specific initial measures for companies to consider in the short term.

What sanctions have already been adopted?

The European Union issued the first package of sanctions against Russia on Feb. 23, 2022, and the second even more far-reaching package of sanctions on Feb. 25, 2022. The sanctions published in the Official Journal of the EU are available [here](#).

In particular, the following restrictions (which also cover supporting acts as well as circumvention attempts) apply:

First EU sanctions package

The first sanctions package of 23 February 2022 contains, in addition to restrictions on trading in transferable securities and money market instruments, in particular the following measures:

Personal sanctions

The EU sanctions, among others, certain members of the Russian State Duma, members of the government and companies. The listed persons/companies are subject to a freezing order (all funds and economic resources of the group of persons are frozen) and a prohibition of provision (no funds or economic resources may be made available to the persons directly or indirectly - i.e. companies controlled by these persons are also covered by the provision prohibition).

Territorial sanctions

The EU sanctions the Ukrainian regions of Donetsk and Luhansk and prohibits all imports into the EU of goods originating in these regions as well as the provision of financing, insurance, etc. in this context. It also prohibits trade from the EU to these territories with goods and technologies

listed in an extensive annex. This concerns in particular goods and technologies suitable for use in the fields of transport, telecommunications, energy and the extraction of oil, gas and mineral resources. Also prohibited are certain services, such as the provision of technical assistance or brokerage, construction or engineering services. Furthermore, the acquisition of stakes in real estate, companies and certain investments in these areas are prohibited.

Second EU sanctions package

In addition to an expansion of the personal sanctions (which now also cover notably the Russian President Putin), the following measures have been added:

Trade in dual-use goods

Trade in listed dual-use goods with Russia as well as services related to them (especially technical assistance) will be further restricted.

Trade in other goods

Furthermore, trade with Russia will be restricted for specified goods from certain sectors, such as: electronics, computers, telecommunications, information security, sensors/lasers, navigation/aerospace electronics, aerospace, or the oil refining sector.

Further sanctions

In particular, as a further sanction, it was decided to exclude some Russian banks from the international payment services system SWIFT.

Furthermore, transactions related to the management of reserves as well as assets of the Russian Central Bank are restricted/frozen. Additionally, the acceptance of deposits exceeding EUR 100,000 from Russian citizens, legal entities, organizations or institutions is prohibited.

Recommendation for action: What needs to be done now?

Clarify responsibilities and appoint a central contact person

It is advisable to bundle responsibilities within the company and centrally appoint a cross-departmental compliance contact or team to monitor sanctions developments and check whether the company's own business activities may be subject to sanctions. Ideally, the employees will work together across departments from Legal & Compliance, Export Control, Purchasing, Sales, Contract Management and/or Accounting.

Comprehensive review of sanctions ordinances

A specific analysis of the regulation of sanctions is essential. To this end, all the measures issued should be read and examined. In addition to the obvious consequences, indirect effects of the sanctions on business activities can be identified. Each company must define its own

processes for avoiding risks with regard to its business activities.

Screening of business partners

Companies with activities or relations to Russia or Ukraine should check and, if necessary, initiate the required measures if sanctioned persons or companies controlled or managed by such persons are among their business partners. The assessment should be carried out by means of IT measures. In this respect, there are numerous IT providers on the market that offer screening software solutions for companies.

Suspension of business activities such as contracting or exports in case of doubts

You should check whether products/services are subject to trade restrictions and, in case of doubt or uncertainty, suspend contracting, exports, payments, etc. for the time being. Companies should not allow pressure by contractual partners, as both companies and acting persons of the management or internal export control can be exposed to sometimes severe penalties in case of violations. Since even the conclusion of a contract can be prohibited, it is helpful to establish an approval process within the company for contract offers and conclusions, which requires the approval of activities by the central department mentioned above.

Existing and future sanction clauses in contracts

Companies which have made precautions through sanction clauses in their contracts, should now invoke them, e.g. in order to terminate contractual commitments. In the event that the company has not provided for sanction clauses, business partners may seek damages. In this case, it will be necessary to carefully examine which risks actually exist and whether the company can invoke contractually existing force majeure clauses if necessary.

Particularly in view of future sanctions, any new contracts relating to Ukraine and Russia should generally contain sanction clauses.

Force majeure in the event of restricted ability to deliver

Irrespective of the question of the impact of the current sanctions, existing supply relationships can also be impaired in purely factual terms by the current situation, for example because upstream suppliers are currently unable to deliver or transport routes are interrupted. In this case, companies should check whether they can invoke respective force majeure clauses vis-à-vis their customers or whether they might be (temporarily) exempt from their delivery obligation on the basis of the applicable law.

Your contacts

If you have any legal questions regarding the EU sanctions against Russia, please do not hesitate to contact our team of experienced Criminal Compliance and Commercial experts. We will continuously analyze the enactment of further sanctions and their impact for our clients.



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