



The EU's Sanctions against Russia

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Russia's war of aggression against Ukraine, which has been going on for more than a month now, is a major concern for European politics, especially from an economic point of view. The European Union has reacted with a whole package of economic sanctions against Russia. The measures, some of which are very far-reaching and drastic, represent a novelty in European foreign policy in their scope but also in their intensity, their reach should not be underestimated. The English trade press even speaks of a "financial warfare" with regard to the sanction measures. However, the consequences of these economic sanctions also directly affect companies that maintain trade relations with Russia. The aim of this article is to provide an overview of the most important sanction measures in force and then to show how companies can react to the difficult situation.

Finances

The SWIFT exclusion of certain Russian banks and their subsidiaries has received a lot of media attention. SWIFT (=Society for Worldwide Interbank Financial Telecommunication) is a Belgium-based organization that provides an infrastructure for financial transactions by banks. A total of about 11,000 banks worldwide are connected to the network and about five trillion dollars are transferred via SWIFT every day. This

makes it the world's largest and most important network for international payments. By excluding Russian banks from SWIFT, transactions to or from Russia are virtually impossible. In the past, SWIFT exclusion has already been applied to Iran and Venezuela, with sometimes serious economic consequences for the countries concerned. The exclusion affects seven selected Russian banks, with the main exceptions being banks that are important for payment transactions in the energy sector.

The granting of new loans or credits to certain legal entities that have been included in the corresponding sanctions list is also prohibited. The only exceptions are loans and credits that are specifically and demonstrably intended to finance non-prohibited imports or exports of goods and non-financial services.

However, the economically most powerful instrument on the escalation scale so far is probably the blockade of the Russian central bank's transactions abroad. All assets of the central bank abroad have been frozen. Russia thus largely loses access to its foreign reserves which were built up through commodity trading. Without access to these foreign currencies, the rouble will be further destabilised, and devalued.

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Trade in goods

Although the European Union's sanctions do not lead to a total embargo, severe restrictions apply to trade in goods with Russia. In particular, export restrictions have been further tightened with respect to certain dual-use goods by significantly expanding the list of goods through the European Union Regulation 2022/328. Dual-use goods are those with a dual purpose, meaning they can be used for civilian or military purposes. Until now, an export license had to be applied for goods included in the list of the European Union's Dual-Use Regulation. The new sanctions regulation now places a general ban on the export of such goods to Russia. The provision of technical assistance, brokering services or financial assistance are now also covered by this ban.

The newly adopted European Union Regulation 2022/328 also bans the export of goods in the aviation, electronics, IT, telecommunications, sensor technology and shipping sectors. The regulation contains lists of goods in the annexes. Among other things, this is intended to make it more difficult for Russia to modernize oil refineries and other key industries in the Russian economy.

The ban on the export of luxury goods to Russia is also new, cf. Regulation 2022/428. Several goods are affected including wines, watches, works of art or musical instruments, with separate value limits applying in each case. For most listed luxury goods, however, a value limit of €300 per piece applies. "Piece" means the good in its respective form for use/consumption (e.g. a bottle of wine).

Significant are also the additional measures undertaken by single European states. The German government, for example, has decided to suspend export guarantees (so-called Hermes cover) and investment guarantees by the German government for Russia and Belarus until further notice. Meanwhile, there is even an EU-wide ban on export credit and investment guarantees for Russia.

However, the comprehensive changes in exports do not apply to transit trade. This refers to deliveries of goods through Russia to another country.

The customs procedure is also affected by the changes. According to the German Chamber of Industry and Commerce (DIHK), ATA Carnets will no longer be issued for Russia or Belarus. A simplified customs procedure is therefore no longer possible.

In addition, an amendment to Regulation 2014/833 leads to a comprehensive import ban on iron and steel products. This applies both to goods originating from Russia and to goods from third countries exported from Russia.

Transport sector

The EU airspace will be closed to all aircraft that are either Russian-owned, Russian-registered or Russian-controlled. This has implications for European manufacturers in this sector. They are prohibited from exporting, selling, supplying or otherwise transferring aircraft and equipment to Russian airlines. This also includes all related repair, maintenance and financial services.

Further measures

The sanctions adopted are directed not only against the Russian Federation itself, but additionally against currently 893 individuals and 65 entities in Russia and abroad that support the war of aggression against Ukraine (as of March 31, 2022). The assets of the sanctioned individuals and entities have been frozen and they may also not be provided with financial resources. Individuals are also banned from entering the country. The names of the individuals and entities concerned can be found in the Official Journal of the European Union.

Large parts of the sanctions have also been extended to Belarus.



With regard to the Donetsk and Luhansk regions, there is a comprehensive trade embargo, Regulation 2022/263. Goods from these regions may no longer be imported into the European Union in principle.

Violation of the sanctions

Violation of EU sanctions constitute criminal or administrative offenses. The legal basis are Sections 18 and 19 of the Foreign Trade and Payments Act and Section 82 of the Foreign Trade and Payments Ordinance. In addition, companies face heavy fines. Above all, however, they run the risk of being included in one of the sanctions lists in the event of serious violations.

Effects on business practice

The highly dynamic events surrounding the sanctions already imposed against Russia are complex and confusing. However, this in no way exempts affected companies from adapting to the new legal situation and taking the necessary actions to this end. All sanction regulations of the European Union take immediate effect from the time they come into force, without the need for an act of transposition into national law.

First of all, all processes in the company should be checked for possible references to Russia or Belarus. The initial focus must be on possible business contacts with sanctioned persons or entities. This applies to both existing business contacts and new business. To this end, it is advisable to conduct in-depth research in the case of suspicious business contacts.

With regard to the European sanctions list, it is advisable to use a website where the various legal acts containing sanctions lists can be searched, for example (in German): <https://www.finanz-sanktionsliste.de/fisalis>. If there are also business contacts with US companies, the “SDN List” and the “Entity List” of the BIS should also be checked. If a business contact appears on one of the sanctions lists, the trade relationship must be terminated. Basically any business contact with sanctioned persons is prohibited. At a minimum, a detailed case-by-case review is

required to determine whether certain legal transactions are feasible.

For the export of goods to Russia or Belarus, the tightening of export restrictions must be observed. However, some sanctions regulations contain so-called old contract clauses. This means that contracts already concluded can still be fulfilled in individual cases despite the existing export ban. As a rule, however, the prerequisite for this is that the contract was concluded before February 26, 2022, that it involves non-military end users and that the transaction is carried out for non-military purposes. Furthermore, a special authorization must be applied for from the competent authority (i.e., the BAFA in Germany) in due time.

Existing Hermes cover continues to protect exporters against non-payment from Russia. If deliveries to Russia are still outstanding, the coverholder Euler Hermes should be contacted. In the case of collective cover (whole turnover policies), cover is no longer available for new shipments to Russia.

If business relationships exist with Russian banks that are affected by the SWIFT exclusion, payment transactions should be stopped. If possible, money shall be transferred from a sanctioned bank’s account to non-sanctioned banks. In this case, it is essential to notify the change of account details to all relevant contractual partners.

Regarding Donetsk and Luhansk regions, all transactions should be stopped.

The company’s IT infrastructure must also be examined for risks. Particularly Russian software (e.g., “Kaspersky”) should be viewed critically against the backdrop of cyberattacks. The German BSI (Federal Office for Security and Information Technology) also reports a significant increase in hacker attacks during the Ukraine conflict. Medium-sized companies are also affected.

In addition to the sanctions-related effects on business practice, the actual consequences of the war must also be taken into account. Airspace closures, interrupted rail links - especially to China - a lack of fuel and a



shortage of logistics personnel are leading to severe disruptions in supply chains. Delays are to be expected here, with no end to the supply bottlenecks in sight.

If legal or factual circumstances cause problems in the fulfilment of contractual obligations to Russian companies, it must be examined in each individual case to what extent legal claims for fulfilment, adjustment of the contract or termination of the business relationship can be considered. This depends to a large extent on the specific contractual agreements between the parties. It should be noted, however, that some of the sanctions regulations themselves contain provisions in this regard.

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