



BORD TA' SORVELJANZA DWAR IS-SANZJONIJIET
SANCTIONS MONITORING BOARD
MALTA

Guidance Note on the Imposition of EU Sanctions concerning Restrictive measures in Respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine

22 July 2022

This guidance note is being produced by the Sanctions Monitoring Board (“SMB”) as the competent authority for the implementation of sanctions in the Republic of Malta in pursuance of its power under Article 7(5)(b) of the National Interest (Enabling Powers) Act (“NIA”), Chapter 365 of the Laws of Malta.

The Sanctions Monitoring Board wishes to draw the attention of the private sector to the recent developments in terms of sanctions imposed by the European Union of individual listings of people and entities as well as sectorial sanctions in view of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.

Obligations at law in terms of the National Interest (Enabling Powers) Act

UN, EU and National sanctions have direct applicability under Maltese law. Indeed, the Act applies to all persons in Malta irrespective of their nationality, status, or reason for being in Malta and therefore sanctions need to be complied with by all irrespective of whether a person or entity is a subject person or otherwise. As a matter of fact, the NIA applies to Maltese persons wherever they may be including all Maltese registered vessels, aircrafts, and other means of transport, notwithstanding that they may not be in operation in Malta.

Every individual and entity operating in Malta, including every Malta licensed subject person, has the obligation to ensure that sanctions are fully adhered to. In the case of subject persons conducting relevant activity or relevant financial business as defined under the PMLFTR, there is an added obligation to have in place internal controls and procedures as required under Article 17(6) of the NIA and to screen the client database against applicable sanctions list on a regular basis and immediately after any change. In those cases where a positive sanction hit is identified, subject persons are obliged to inform the SMB and notify the same of the actions taken immediately.

The NIA envisages hefty penalties for violations of sanctions. Upon conviction, a person is liable to an imprisonment from a minimum of 12 months to a maximum of 12 years and/or a fine of not less than €25,000 and not exceeding €5 million. In the case of legal entities, the fine envisaged stands at a minimum of €80,000 up to a maximum of €10 million. Furthermore, administrative penalties are applicable for violations of Article 17(6) of the Act requiring subject persons to have in place and effectively implement internal controls and procedures to ensure compliance with EU, UN and National sanctions.



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Sanctions by Sectors:

In light of the situation in Ukraine, the EU has adopted five packages of sanctions against Russia which can be summarised as follows:

New designations

The European Union adopted the first sanctions package on 23 February 2022 in response to the decision by the Russian Federation to proceed with the recognition of the non-government-controlled areas of the Donetsk and Luhansk oblasts of Ukraine as independent entities, and the subsequent decision to send Russian troops into these areas. The initial sanctions package included targeted restrictive measures to cover all the 351 members of the Russian State Duma and an additional designation of 27 high profile individuals and entities, who have played a role in undermining or threatening the territorial integrity, sovereignty and independence of Ukraine. Restrictions were also introduced on imports on goods from the non-governmental controlled areas of the Donetsk and Luhansk oblasts, restrictions on trade and investments related to certain economic sectors, a prohibition to supply tourism services, and an export ban for certain goods and technologies. The EU also introduced a sectoral prohibition to finance the Russian Federation, its government and Central Bank.

The European Union on 25 February 2022 proceeded to adopt a further package of individuals and economic measures covering also Belarus to respond to the military aggression carried out by the Russian Federation against Ukraine. In addition to the freezing of assets of the Russian President and Minister of Foreign Affairs, the EU has imposed restrictive measures on members of the National Security Council of the Russian Federation. Sanctions have also been extended to the remaining members of the Russian State Duma and those individuals who facilitated the Russian military aggression from Belarus. The EU has also implemented economic sanctions existing in the financial, energy, transport and technology sectors as well as visa policy.

On 28 February another 26 persons and one entity were added to the list of persons entities and bodies subject to restrictive measures. These new measures include oligarchs and businessmen active in the oil, banking, and finance sectors as well as government members, and high-level military personalities and propogandists who contributed to spread anti-Ukrainian propaganda and promote a positive attitude towards the invasion of Ukraine. On 2 March a further 22 persons were added to the list.

The EU has also designated Russian President Putin and Foreign Minister Lavrov as well as those said to have facilitated the Russian military aggression from Belarus, and members of the State Duma not yet listed who ratified the decrees between Russia and the DNR and LNR.

On 09 March 2022, the EU adopted restrictive measures on an additional 160 individuals. The listed individuals and entity included 14 oligarchs and prominent businesspeople involved in key economic sectors providing substantial source of revenue to the Russian Federation and 146 members of the Russian Federation Council. On 15 March 2022, the EU designated an additional 15 individuals including oligarchs and prominent businesspeople as well as 9 entities in the aviation, military and dual use, shipbuilding and machine building sectors. The EU



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imposed restrictive measures on 217 individuals including high ranking Kremlin officials, oligarchs and other prominent businesspeople on 08 April 2022. The EU has also designated 18 entities including four major Russian banks amongst others.

On 03 June 2022, the EU added 66 individuals and 18 entities to the list of natural and legal persons, entities and bodies subject to restrictive measures set out in Annex I to Regulation (EU) No 269/2014.

On 21 July 2022, the EU extended the list of natural and legal persons, entities and bodies subject to restrictive measures set out in Annex I to Regulation (EU) No 269/2014 to 44 individuals and 9 entities. Decision (CFSP) 2022/1272 amending Decision 2014/145/CFSP introduced a further derogation from the asset freeze and the prohibition to make funds and economic resources available to designated persons and entities in order to prevent or mitigate an event likely to have a serious and significant impact on human health and safety or the environment. Decision (CFSP) 2022/1272 also introduced a derogation from the asset freeze and the prohibition to make funds and economic resources available to designated banks in view of the Union's stance to avoid and combat food insecurity around the world. Decision (CFSP) 2022/1272 also introduced a derogation from the asset freeze and the prohibition to make funds and economic resources available for the orderly wind-down of operations, including correspondent banking relations, with one designated bank. In view of ensuring the effective and uniform implementation of Regulation (EU) No 269/2014 designated persons and entities with assets within the jurisdiction of a Member State are now obliged to report these assets and to cooperate with the competent authority in the verification of this reporting. The Failure to respect this obligation would constitute a circumvention of the freezing of assets and would be subject to penalties if the conditions for such penalties are met under applicable national rules and procedures. Regulation (EU) No 269/2014 should therefore be amended accordingly.

Overall, EU restrictive measures under the Ukraine Territorial Integrity regime apply to a total of 1,212 individuals and 108 entities. Those designated are subject to an asset freeze whereby EU citizens and companies are prohibited from making any funds available to them. The said individuals are also subject to a travel ban prohibiting them from entering or transiting through EU territories. Further derogation options from the asset freeze and the prohibition to make funds and economic resources available to designated persons and entities have been introduced.

The consolidated list of persons subject to financial sanctions may be viewed on the following link:<https://data.europa.eu/data/datasets/consolidated-list-of-persons-groups-and-entities-subject-to-eu-financial-sanctions?locale=en>

Visa restrictions

The EU has suspended the Agreement between the European Community and the Russian Federation on the facilitation of the issuance of visas as from 28 February 2022. This agreement allows for privileged access to the EU for Russian diplomats, other officials and businesspeople.



Financial Restrictions on Russia

The restrictions applicable to Russia comprise of the direct or indirect purchase, sale provision of investment services or assistance in the issuance of or otherwise dealing in transferable securities and money market instruments issued after 9 March 2022 by Russia and its Government or The Central Bank of Russia or the any of the legal persons listed in article 5b of Council Regulation 833/2014. Likewise prohibited are new loans or credit after 23 February to the same entities. The transactions related to the management of reserves as well as assets of the Central Bank of Russia including transactions with any legal persons, entity or body acting on behalf of or at the direction of the central Bank of Russia is also prohibited. Restrictions have also been introduced with regards to the provision of specialised financial messaging services (SWIFT) to seven Russia based banks.

Council Regulation 2022/262; Council Decision 2022/325; Council Decision (CFSP) 2022/327; Council Regulation (EU) 2022/328; Council Regulation 2022/345; Decision (CFSP) 2022/430; Council Regulation 2022/576; Council Decision (CFSP) 2022/578 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine

The abovementioned measures introduce the following restrictions:

- The expansion of existing financial restrictions, particularly those on access by certain Russian entities to capital markets;
- The prohibition on the listing and provision of services in relation to shares of Russian state-owned entities on EU trading venues;
- Prohibition on the acceptance of any deposits from Russian nationals and residents or entities established in Russia, if the total value of deposits exceeds €100,000. This does not apply to Russians who are also EU nationals or who have a permanent or temporary resident permit in the EU. Moreover, the restriction does not apply to non-prohibited cross-border trade in goods and services between the EU and Russia;
- The prohibition on the provision of services by EU central securities depositories (CSDs) and the sale of euro-denominated securities to Russian people/entities (not applicable to EU nationals or temporary/permanent residents);
- The prohibition on the investment, participation, contribution to projects co-financed by the Russian Direct Investment Fund;
- As of March 12 2022, it is prohibited to provide specialised financial messaging devices which are used to exchange financial data (SWIFT) to Bank Otkritie, Novikombank, Promsvyazbank, Rossiya Bank, Sovcombank, Vnesheconombank (VEB), and VTB Bank or to any legal person entity or body established in Russia whose proprietary rights are directly or indirectly owned for more than 50% by an entity listed in annex XIV;
- A ban on selling, supplying, transferring or exporting euro denominated bank notes to Russia;
- A prohibition on the provision of public financing or financial assistance for trade with, or investment in, Russia;
- A prohibition in dealing in any transferable securities and money market instruments issued after 12 April 2022 and to provide any new loans or credit to any legal person, entity or



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body referred to in article 5 (1), (2), (3) or (4) of Council Regulation 833/2014 after 26 February 2022;

- A prohibition on all transactions with certain state-owned companies which are already subject to refinancing restrictions;
- A prohibition on the provision of credit rating services, banning access to any subscription services in relation to credit rating activities to Russian clients;
- A prohibition on being a beneficiary, acting as a trustee or in similar capacities for Russian persons and entities, as well as a prohibition on providing certain services to trusts;
- A prohibition on the provision of support, including financing and financial assistance or any other benefit from a Union, Euratom or Member State programme to Russian publicly owned or controlled entities;
- An extended prohibition on deposits to crypto-wallets, accounts or custody services to Russian nationals or natural persons residing in Russia, or legal persons, entities or bodies established in Russia if the total value of crypto-assets of the natural or legal person, entity or body per wallet, account, or custody provider exceeds EUR 10,000;
- A prohibition on the export of banknotes and on the sale of euro-denominated transferrable securities to all official currencies of the Member States to Russia and Belarus, or to any natural or legal person, entity or body in Russia and Belarus and;
- A full transaction ban imposed on four key Russian banks namely, Otkritie FC Bank, Novikombank, Sovcombank and VTB Bank. Following their removal from the SWIFT system these banks will now be subject to an asset freeze, thereby being completely cut off from EU markets.
- The EU has extended to prohibition on the provision of specialised financial messaging services (SWIFT) to another three Russian credit institutions, namely, Sberbank, Credit Bank of Moscow, and the Russian Agricultural Bank and the Belarusian Bank For Development And Reconstruction.
- Decision CFSP 2022/127 expands the scope of the prohibition on accepting deposits to include those from legal persons, entities or bodies established in third countries and majority-owned by Russian nationals or natural persons residing in Russia.
- Decision CFSP 2022/127 additionally subjects the acceptance of deposits for non-prohibited cross-border trade to a prior authorisation by the national competent authorities.
- Decision (CFSP) 2022/127 extends the exemption from the prohibition to engage in transactions with certain State-owned entities as regards transactions for agricultural products and the supply of oil and petroleum products to third countries.

Financial Restrictions on Belarus

Restrictions targeting the Belarusian financial sector include the restriction on the provision of specialised financial messaging services (SWIFT), the prohibition on transactions with the Central Bank of Belarus related to the management of reserves or assets, and the provision of public financing for trade with and investment in Belarus, the prohibition of the listing and provision of services in relation to shares of Belarus state-owned entities on EU trading venues and limitation of the financial inflows from Belarus to the EU by prohibiting the acceptance of



deposits exceeding €100.000. A prohibition on the provision of euro denominated banknotes to Belarus has also been introduced.

Council Regulation (EU) 2022/398 and Council Decision (CFSP) 2022/399 concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine

The abovementioned measures introduce the following restrictions:

- A prohibition on the provision of specialised financial messaging services (SWIFT) to Belagroprombank, Bank Dabrabyt, and the Development Bank of the Republic of Belarus, as well as their Belarusian subsidiaries which are relevant for the Belarusian financial system and which are already the subject of restrictive measures imposed by the Union;
- A prohibition on transactions with the Central Bank of Belarus related to the management of reserves or assets, and the provision of public financing for trade with and investment in Belarus;
- A prohibition on the listing and provision of services in relation to shares of Belarus state-owned entities on EU trading venues as of 12 April 2022;
- The introduction of the prohibition on the acceptance of deposits exceeding EUR 100,000 from Belarusian nationals or residents, the holding of accounts of Belarusian clients by the EU central securities depositories, as well as the selling of euro-denominated securities to Belarusian clients and;
- A prohibition on the provision of euro denominated banknotes to Belarus.

Restrictions on Consulting Services

- On 03 June, the EU has introduced a prohibition on accounting, auditing, tax and consultancy services and public relations services to the Government of Russia and/or legal persons, entities or bodies established in Russia.

Restrictions on Trade

Council Regulation 2022/263 of 23 February 2022 concerning restrictive measures in response to the recognition of the non-government-controlled areas of the Donetsk and Luhansk oblasts of Ukraine and the ordering of Russian armed forces into those areas.

The trade restrictions relate to:

- The importation into the EU of goods originating in the Donetsk and Luhansk oblasts of Ukraine as well as the provision of financing, financial assistance, insurance and reinsurance related to the same.
- Dealing in real estate located in the Donetsk and Luhansk oblasts of Ukraine, participating in ownership or control of entities situated in the said area as well as the provision of any loans or credit to the said entities and the creation of joint ventures and provision of investment services.



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- The sale, supply transfer or export goods and technology listed in Annex II of Council Regulation 2022/263 which are related to the transport, telecommunications, energy sectors including the exploration and production of oil, gas and mineral resources. These measures include the provision of technical assistance, brokering construction or engineering services.
- The provision of services directly related to tourism activities in the Donetsk and Luhansk oblasts of Ukraine;

Moreover, **Council Decision (CFSP) 2022/327** and **Council Regulation (EU) 2022/328** prohibit the sale, supply, transfer or export, directly or indirectly, of the following, whether or not originating in the EU, to any person/entity in Russia or for use in Russia:

- goods and technology suited for use in oil refining;
- goods and technology suited for use in the aviation and space industry;
- dual-use goods and technology listed in Annex I to Regulation (EU) 2021/821; and
- goods and technology which might contribute to Russia's military and technological enhancement, or the development of the defence and security sector.

The provision of certain related services, including technical assistance, brokering and financing, and certain sector-related activities are also prohibited.

On 09 March 2022, the EU adopted **Decision (CFSP) 2022/395** amending Decision 2014/512/CFSP imposing further restrictive measures with regard to the export of maritime navigation goods and technology as listed in Annex XVI. Therefore, it is prohibited to sell, supply, transfer or export these goods, directly or indirectly whether or not originating in the EU, to any natural person, entity or body in Russia, for use in Russia, or for the placing on board of a Russian-flagged vessel. Furthermore, on 15 March 2022, the EU adopted **Decision (CFSP) 2022/430**, amending Decision 2014/512/CFSP to introduce further trade restrictions concerning iron and steel, as well as luxury goods. Decision (CFSP) 2022/430 expands the list of persons connected to Russia's defence and industrial base, on whom tighter export restrictions regarding dual-use goods and technology as well as goods and technology which might contribute to the technological enhancement of Russia's defence and security sector are imposed.

On 08 April 2022, the EU adopted **Council Regulation (EU) 2022/576** and **Decision (CFSP) 2022/578**, amending Decision 2014/512/CFSP. This extends the list of controlled items which may assist the Russian military and technological enhancement or the development of its defence and security sector. The restrictive measures introduce additional import restrictions on certain goods from Russia, in particular on coal and other solid fossil fuels into the EU. It also introduces further export bans to Russia targeting jet fuel and other goods such as quantum computers and advanced semiconductors, high-end electronics, software, sensitive machinery and transportation equipment. Moreover, new import bans have also been introduced on products such as wood, cement, fertilisers, seafood and liquor.

On 03 June 2022, the EU decided to prohibit the purchase, import or transfer of crude oil and certain petroleum products from Russia into the EU. An exception is foreseen for imports



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of crude oil by pipeline into EU member states that, due to their geographic situation, suffer from a specific dependence on Russian supplies. Bulgaria and Croatia will also benefit from temporary derogations concerning the import of Russian seaborne crude oil and vacuum gas oil respectively.

On 03 June 2022, the EU has also expanded the lists of persons and entities concerned by export restrictions regarding dual-use goods and technology. Such additions to the list include both Russian and Belarusian entities. The EU has also expanded the list of goods and technology which may contribute to the technological enhancement of Russia's defence and security sector. This will include eighty chemicals which may be used in the production of chemical weapons.

On 21 July 2022 and through Decision (CFSP) 2022/1271 the list of controlled items which might contribute to Russia's military and technological enhancement or the development of its defence and security sector has been extended. The EU has also imposed a prohibition on the direct or indirect import, purchase or transfer of gold. This prohibition applies to Russian-origin gold, exported from Russia after the entry into force of these restrictive measures.

Transport

Council Decision (CFSP) 2022/335 and **Council Regulation (EU) 2022/334** impose a flight ban on any aircraft operated by Russian air carriers, including as a marketing carrier in code sharing or blocked space arrangements, to any Russian registered aircraft, or to any non-Russian-registered aircraft which is owned or chartered, or otherwise controlled by any Russian person/entity, to land in, take off from, or overfly EU territory. The prohibition includes permission to land in, take off from or overfly the territory of the European Union.

Council Regulation (EU) 2022/576 and **Decision (CFSP) 2022/578** introduce a prohibition on any Russian and Belarusian road transport undertakings preventing them from transporting goods by road within the Union, including in transit. Derogations may be granted on a number of products such as pharmaceutical, medical, agricultural and food products, including wheat, and for road transport for humanitarian purposes. The aforementioned also introduced a prohibition on access to ports to vessels registered under the flag of Russia. Derogations in this regard are granted for agricultural and food products, humanitarian aid and energy.

Decision (CFSP) 2022/1271 introduced on 21 July 2022 extends the port access ban to locks in order to ensure full implementation of the measure and avoid circumvention. Decision (CFSP) 2022/1271 further allows, the sharing of technical assistance with Russia in relation to aviation goods and technology in this specific framework.

Broadcasting

Any broadcasting by the legal persons, entities or bodies listed in Annex XV of Council Regulation 833/2014 is prohibited. This prohibition includes the transmission or distribution by any means such as cable, satellite, IP-TV, internet service providers, internet video-sharing platform or applications whether new or pre-installed.



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Broadcasting activities in the EU of three Russian state-owned outlets have been suspended. These outlets are Rossiya RTR/RTR Planeta, Rossiya 24 / Russia 24 and TV Centre International.

Energy Sector

Decision (CFSP) 2022/430 imposes prohibitions targeting new investments in the Russian energy sector, as well as a comprehensive export restriction on equipment, technology and services for the energy industry in Russia, with the exception of the nuclear industry and the downstream sector of energy transport.

Public Procurement and Contracts

A general prohibition on participation of Russian companies in public procurement in Member States has been introduced by way of Council Regulation (EU) 2022/576 and Decision (CFSP) 2022/578. This forbids the award and continued execution of public contracts and concessions with Russian nationals and entities, or bodies established in Russia.

Decision (CFSP) 2022/1271 allows an exemption from the prohibition to enter into any transactions with Russian public entities necessary to ensure access to judicial, administrative or arbitral proceedings.

The restrictive measures adopted by the European Union in response to Russia's actions against Ukraine may be consulted on the Sanctions Monitoring Board's website as follows hereunder:

<https://foreignandeu.gov.mt/en/Government/SMB/Pages/Latest-News-on-Sanctions-imposed-under-the-Ukraine-Territorial-Integrity-Regime.aspx>

It is recommended that all persons in Malta remain informed of any updates made to applicable sanctions.

To subscribe to the mailing list of the Sanctions Monitoring Board one may send an email to updates.smb@gov.mt.
