

Russian sanctions: Understanding the Impact

11 May 2022

Webinar for members of Cyprus Employers & Industrialists Federation (OEB)



George Apostolou

Partner | Cyprus



+357 2584 4313



george.apostolou@harneys.com

George Apostolou is a partner in our Cyprus office, where he specialises in the areas of financial services and regulatory law, corporate and commercial laws, banking and finance, private equity and trusts as well as project and asset finance transactions and security structures.



Aki Corsoni-Husain

Partner | Cyprus



+357 2584 4326



aki.corsoni-husain@harneys.com

As head of Regulatory in Harneys Global Tax and Regulatory department, Aki Corsoni-Husain specialises in all aspects of contentious and non-contentious financial services, sanctions, anti-money laundering and information exchange law.



Elina Mantrali

Senior Associate | Cyprus



+357 2584 0020



elina.mantrali@harneys.com

Elina Mantrali is a key part of our Tax and Regulatory practice within the Cyprus office. Elina regularly advises clients on economic sanctions as well as the regimes governing banks, investment funds, investment firms, payment services providers and fiduciaries.

Russian sanctions: Understanding the Impact

Contents

- 01** Sanctions and restrictive measures globally

- 02** Implementation of EU sanctions in Cyprus

- 03** EU sectoral and trade sanctions on Russia

- 04** EU asset freezes on Russian companies and individuals

- 05** Practical Examples

- Short Break

- 06** Q&A session

1. Sanctions and restrictive measures globally



Sanctions as a new(ish) global tool of foreign policy

- **UN Security Council** implements sanctions when there is broad agreement globally:
 - Libya/Mali/North Korea;
 - Iran (JCPOA).
- UNSC cannot pass sanctions where the **5 permanent members** (including Russia) disagree.
- Regional unilateral/multilateral sanctions regimes: as relevant to Russia – **EU/UK/US**.
- Distinction between “**sanctions**” and “**restrictive measures**”.
- Cyprus implements EU sanctions directly. However other regimes are directly relevant too. For example:
 - **UK regime** – many UK nationals / dual nationals in Cyprus, use of UK-origin companies (BVI/Cayman/etc);
 - **US regime** – many US dollar transactions in Cyprus. CySEC, CBA, SELK, and the CBC strongly encourage firms to ‘have regard’ to US sanctions.
- In the case of Russia sanctions, a **gap analysis** between the regimes is important, e.g.:
 - UK/US ban on **accounting services**
 - EU ban on **trust services**

2. Implementation of EU sanctions in Cyprus



Regime in Cyprus

- **Cyprus is an EU member state** and implements the EU's Common Foreign and Security Policy (**CFSP**) domestically.
- The **Council of the EU agrees** on sanctions unanimously, each member state has a possible veto on new sanctions or restrictive measures.
- EU legislates through **regulations and decisions**
- **EU expects** member states to give full effect to those regulations as a matter of criminal law.
- Cyprus has fully implemented EU sanctions, as criminal offences, under the **Implementation of Sanctions Law 2016**.
- Multiple competent authorities
 - Financial Sanctions Advisory Committee (SEOK)
 - Sanctions Enforcement Unit (SEU / MEK)
 - CySEC
 - Central Bank
 - Insurance Companies Control Service
 - Ministry of Finance
 - Ministry of Foreign Affairs

Penalties in Cyprus

- **2016 Law:**

*“4.- (1) **Any person**, who contravenes any of the provisions of the [UN sanctions] and of the [EU restrictive measures], **is guilty of an offence**, and without prejudice to any other legislative provision providing a greater penalty, upon conviction is subject to:*

*a) in the case of an individual, **imprisonment** not exceeding two years or to a **fine** not exceeding EUR 100,000 or both these penalties; and*

*b) in the case of a legal entity, a **fine not exceeding EUR 300,000.**”*

- **Additionally:**

- Risks of **licensing suspension or cancellation** (CySEC, Central Bank)
- **Express designation** under EU / UK / US asset freezes
- **Breach of contract** under sanctions clauses
- **Personal liability** of directors, officers and members of staff

EU chronology of sanctions against Russia: 2014

- **2014:** Start of Ukraine-Russia conflict
 - Misappropriation of the pro-Kremlin Yanukovich government
 - Annexation of Crimea
 - Separatist movements in the Donbass region. Attack on Ukrainian sovereignty.
- Key pillars of EU-Russia sanctions come into being:
 - Regulation 208/2014: Yanukovich
 - Regulation 269/2014: Russian asset freezes
 - Regulation 692/2014: Crimea embargo
 - Regulation 833/2014: Trade and sectoral

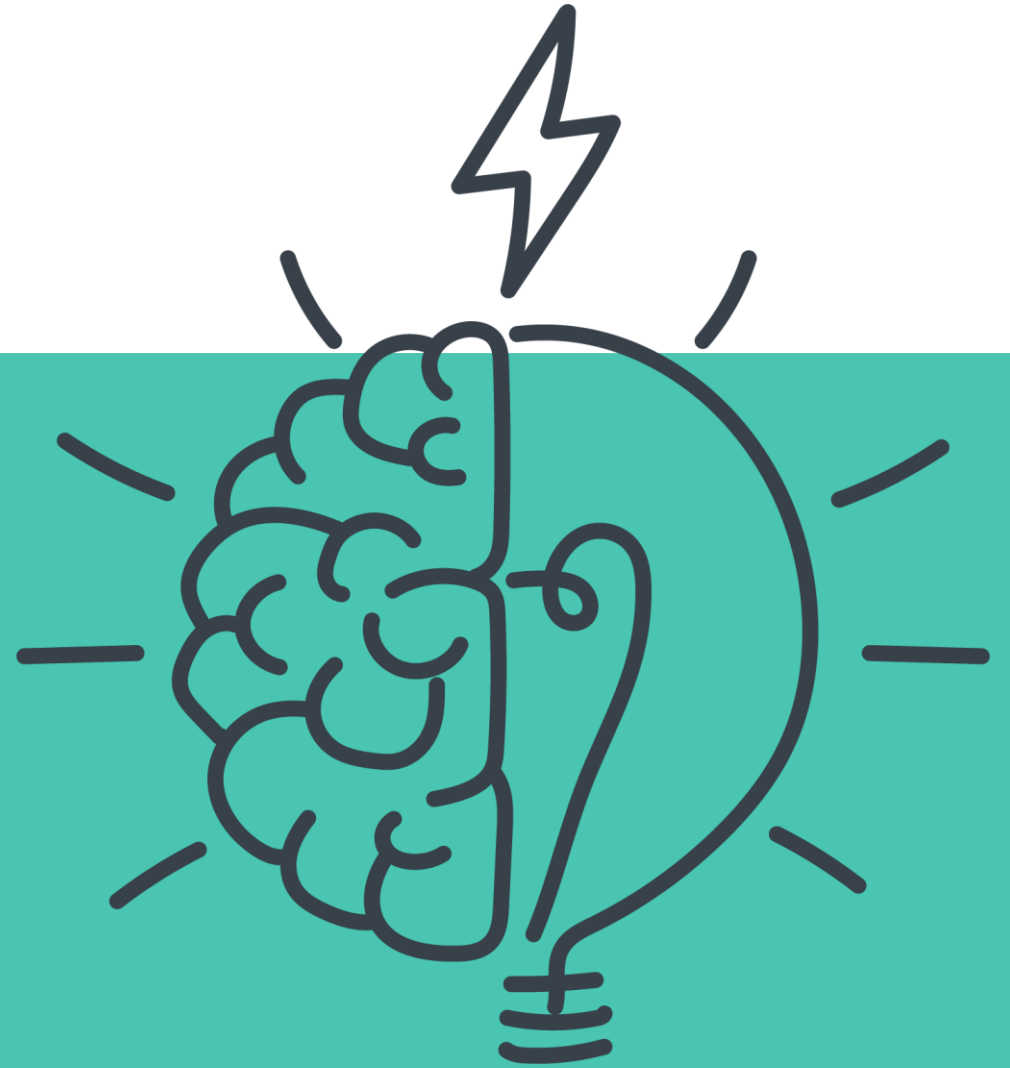
EU chronology of sanctions against Russia: 2022

- **2022:** Russia invades Ukraine
 - **1st Package:** 23 February, tanks roll in and embargo on dealings in Donetsk and Luhansk.
 - **2nd Package:** 25 February, cutting of Russia from capital markets and mass asset freezing begins. Energy and other sectoral sanctions introduced/enhanced. Visa restrictions. Bank account restrictions.
 - **3rd Package:** 28 February and 2 March, **Central bank** sanctioned, SWIFT ban, restrictions on euros, media ban. More asset freezes.
 - **“Compliance package”:** 9 March, Belarus sanctions enhanced, including SWIFT. Crypto assets expressly included. More asset freezes on Belarus and Belarus.
 - **4th Package:** 15 March, Prohibition on transactions with Russian state owned entities. Iron and steel ban. Luxury goods export ban. More asset freezes.
 - **5th Package:** 8 April, Ban on coal and road transfers by Russian undertakings. Ban on access to EU ports. Prohibition on acting as a trustee or in similar capacities for Russian persons and entities, as well as provision of certain related services.

EU sanctions against Russia: what's next?

- **6th Package** of measures in the pipeline
- **Not yet adopted** – outline of proposed measures provided in speech by Ursula von der Leyen on 4 May.
- Proposal includes:
 - Complete import ban on all Russian oil, seaborne and pipeline, crude and refined
 - Exclusion of Sberbank from SWIFT
 - Ban on services by “*accountants, consultants and spin doctors*”
- A number of Member States have **objected** to the proposed new measures – e.g. Hungary has indicated it will veto the oil embargo.
- Cyprus has objected to proposed measures on the **transfer of Russian oil** from European-flagged ships and the measure banning the **provision of consulting and accounting services** to Russians.

3. EU sectoral and trade sanctions on Russia



EU trade sanctions: pre-2022 position

- **Capital markets**, financing and lending restrictions:
 - Restrictions on equity / debt financing state owned banks, oil companies and defence firms and their affiliates and nominees.
 - Investment services in relation to above.
- Restrictions on **arctic oil** exploration.
- **Crimea** embargo:
 - Total block on transactions involving the annexed regions of Crimea and Sevastopol.
 - Sanctions found within Regulation 833/2014 and 692/2014.

EU trade sanctions (2022): Russia state restrictions

- Prohibition on **capital markets** assistance on:
 - Russia and its government
 - the Central Bank of Russia
 - persons acting on their behalf or direction.
- Prohibition on new lending or credit arrangements with above persons after 23 February 2023.
- Does not apply to drawdowns or disbursements made under contracts concluded prior to that date, subject to conditions.

EU trade sanctions (2022): Key enterprises transaction ban

- Prohibition to engage in any transactions with:
 - OPK Oboronprom
 - United Aircraft Corporation
 - Uralvagonzavod
 - Rosneft
 - Transneft
 - Gazprom Neft
 - Almaz-Antey
 - Kamaz
 - ROSTEC (Russian Technologies State Corporation)
 - JSC PO Sevmash
 - Sovcomflot
 - United Shipbuilding Corporation
- Prohibition extends to persons owned by these entities by more than 50%, or otherwise controlled by them or acting at their direction.
- This prohibition becomes operative on 15 May 2022 in respect of any existing transactions concluded prior to 16 March 2022.
- This means *existing* transactions with these entities must be wound down by 15 May 2022.
- **Extension** of capital markets restrictions to further banks, including Alfa Bank, Otkritie, Bank Rossiya and Promsvyazban.
- Prohibition on investment services in relation to the above.

EU trade sanctions (2022): Bank account restrictions

- Prohibition on **accepting deposits** from:
 - Russian nationals;
 - Natural persons residing in Russia;
 - Legal persons, entities or bodies established in Russia,where the **total value** of deposits of the natural or legal person, entity or body per credit institution exceeds EUR 100 000
- Equivalent prohibition applies to the maintenance of crypto-asset ,wallet, account or custody services
- Prohibition does not apply to nationals of a Member State or to natural persons having a temporary or permanent residence permit in a Member State.
- Prohibition additionally does not apply to deposits which are necessary for non-prohibited cross-border trade in goods and services between the EU and Russia.
- Possible to apply for exemption from competent authority for basic needs, payment of reasonable professional fees or expenses related to legal services, among others.

EU trade sanctions (2022): Prohibition on sale of shares

- Prohibition on the sale of transferable securities:
 - denominated in an official currency of a Member State issued after 12 April 2022 *or*
 - fund units providing exposure to such transferable securities,to any Russian national, resident of Russia or legal person established in Russia.
- Prohibition does **not** apply to **nationals of a Member State** or natural persons having a **temporary or permanent residence** permit in a Member State.
- Guidance states that prohibition **extends** to a sale of securities to a **European entity** which is owned by a prohibited person.
- Possible to apply for **exemption** from competent authority for basic needs, payment of reasonable professional fees or expenses related to legal services, among others.

EU trade sanctions (2022): SWIFT ban

- Restrictive measures with regard to the provision of **specialised financial messaging services** to certain Russian credit institutions and their Russian subsidiaries – in other words, the **SWIFT ban**.
- Prohibited as of 12 March 2022 to provide specialised financial messaging services, which are used to exchange financial data, to specified persons *or* to persons directly or indirectly owned by them by more than 50%.

EU SWIFT ban covers:

- *Bank Otkritie*
- *Novikombank*
- *Promsvyazbank*
- *Bank Rossiya*
- *Soucombank*
- *Vnesheconombank (VEB)*
- *VTB Bank*

EU trade sanctions (2022): Prohibition on trust services

Prohibition on:

- Registration, provision of registered office, business or administrative address, as well as management services to **new** trusts or similar legal arrangements,
- The provision of services of trustee, nominee shareholder, director, secretary or similar position for a **new** trust or new similar legal arrangement,

in each case having as a **trustor (settlor)** or a **beneficiary** Russian nationals, Russian residents, legal persons established in Russia, or legal persons whose proprietary rights are directly or indirectly owned by more than 50%, controlled by or acting at the direction of such persons.

- Prohibition from 10 May 2022 to act as, or arrange for another person to act as, a trustee, nominee shareholder, director, secretary or a similar position, for a trust or similar legal arrangement as referred to above – this captures **existing** trusts.
- Prohibitions do not apply where trustor or beneficiary is a national of an EU Member State or has temporary or permanent residency in an EU Member State
- ‘Similar legal arrangements’ does not extend to companies
- Reference to trust captures bare trust (nominee) arrangements

EU trade sanctions (2022): Defenses for non-performance

- Protection from **claims** in connection with a contract or transaction the performance of which has been affected by the prohibition.
- Protection for natural or legal persons, entities where they **did not know, and had no reasonable cause to suspect**, that their actions would infringe the measures set out in this Regulation.
- Not a protection from **lack of due diligence** on structures or lack of **awareness of sanctions provisions**.

EU trade sanctions (2022): Circumvention

- It is prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to **circumvent** the EU trade restrictions.
- This prohibition must be interpreted **widely**.
- Measures implemented with the purpose of avoiding the EU trade restrictions are prohibited.
- Advising on how to structure arrangements with the purpose of avoiding sanctions is equally prohibited.

4. EU asset freezes on Russian companies and individuals



Asset freezes (2022): Prohibition on dealings with asset frozen persons

Prohibition on dealings with asset frozen person consists of:

- **Freeze** on all funds and economic resources belonging to, owned, held or controlled by any natural or legal persons, entities or bodies, or natural or legal persons, entities or bodies associated with the person designated under the asset freeze.
- **Prohibition on making available funds or economic resources**, directly or indirectly, to or for the benefit of natural or legal persons, entities or bodies, or natural or legal persons, entities or bodies associated with the person designated under the asset freeze.

Asset freezes (2022): Exemptions

- Significant extension to exemption regime available under pre-2022 provisions.
- Introduced in response to mass asset freezes and asset freezes on key Russian banks.
- **Option to apply to the competent authority** for an exemption to pay for basic needs, reasonable professional fees or incurred expenses associated with the provision of legal services, payment of fees or services charges for routine holding or maintenance of frozen funds or economic resources .
- **Option to apply to the competent authority** for an exemption in connection with enforcing arbitral decisions or court orders issued prior to date of listing.
- **Option to apply to the competent authority** for an exemption for an asset frozen person to make payment due under contract prior to date of listing.
- **Option to apply to the competent authority** to release funds of asset frozen persons for the purposes of winding down operations, including with respect to doing so before deadlines specified in the Regulation.
- Crediting of frozen accounts by credit institutions is permitted, provided that any such new funds received also **remain frozen**.

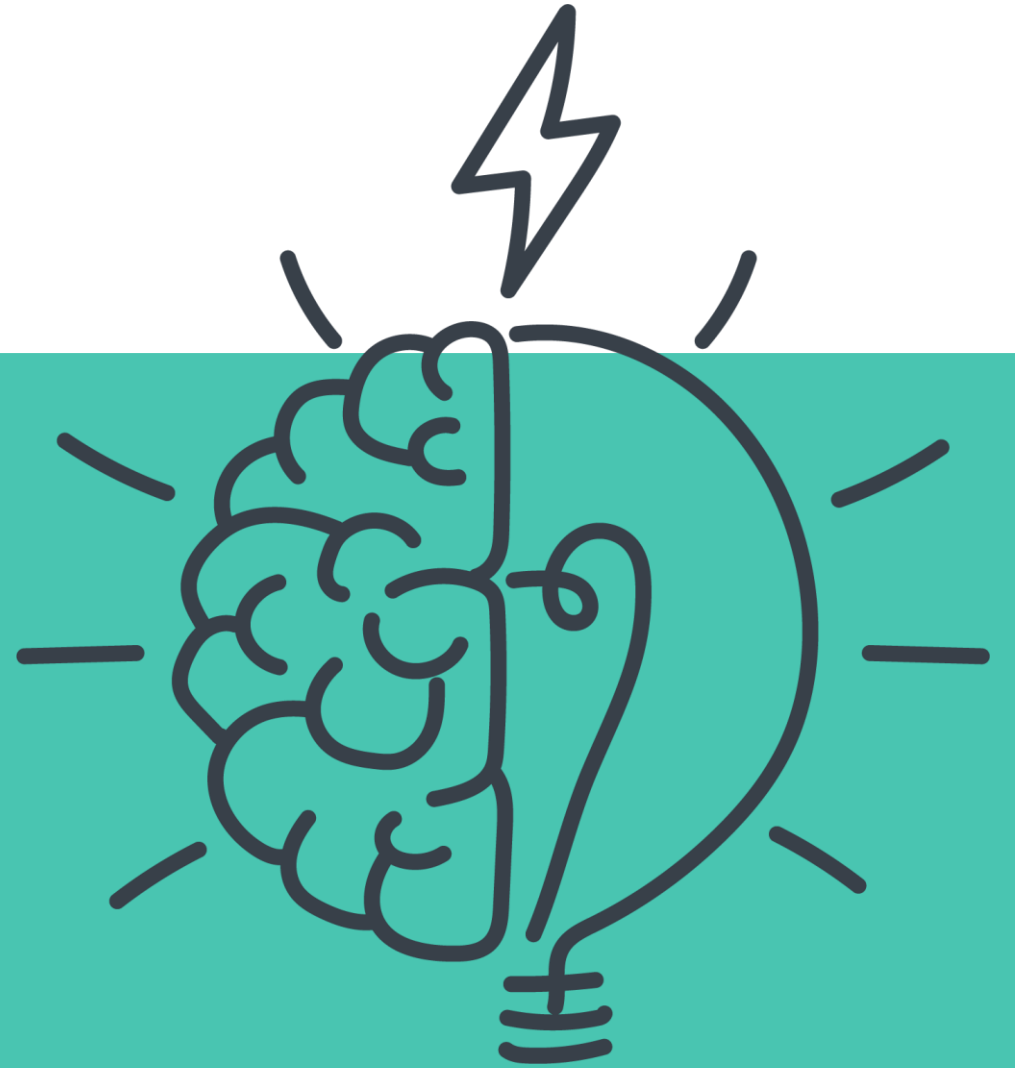
Asset freezes (2022): Defences for non-performance

- Similar to protections granted under EU trade sanctions.
- Protection from **claims** in connection with a contract or transaction the performance of which has been affected by the asset freeze.
- Protection from liability for natural or legal persons, including directors or employees, for **freezing** or **refusing to make available** funds or economic resources to asset frozen persons, *unless* it is proved that the funds and economic resources were frozen or withheld as a result of negligence.
- Protection for natural or legal persons, entities where they **did not know, and had no reasonable cause to suspect**, that their actions would infringe the measures set out in this Regulation.
- Not a protection from **lack of due diligence** on structures or lack of **awareness of sanctions provisions**.

Asset freezes (2022): Circumvention

- It is prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the asset freeze.
- This prohibition must be interpreted widely.
- Measures implemented with the purpose of avoiding the asset freeze are prohibited.
- Advising on how to structure arrangements with the purpose of avoiding sanctions is equally prohibited.

5. Practical Examples



Practical examples: EU trade sanctions

- Prohibition on trust services: Director of a company acting as trustee for a Russian natural person resident in Russia.
- Prohibition on trust services: Trustee of trust for a Russian natural person resident in Russia established before 9 April 2022.
- Prohibition on trust services: Status of nominee arrangements.
- Prohibition on sale of shares: Share purchase agreement for the transfer of new shares issued after 12 April 2022 to a Cypriot company owned by a Russian natural person resident in Russia.

Practical examples: Asset freezes

- Asset freeze: Status of subsidiary of a company directly designated under the asset freeze.
- Asset freeze: Member of the board of directors of an entity subject to the asset freeze.
- Asset freeze: Acting as secretary for an entity subject to the asset freeze.

Q&A

