

Current as of 28 March 2022,
11:00, CET

Practical Implications of the Current EU and Swiss Sanctions against Russia and Belarus

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The European Union, Switzerland, the UK and other jurisdictions have continued to expand sanctions against Russia and Belarus in response to the war in Ukraine. The current restrictions now consist of a coordinated, comprehensive web of far-reaching targeted sanctions, financial restrictions, and economic embargoes (for an overview of the current sanctions, see our **infographic** [here](#) and our previous update [here](#)). While these sanctions target certain individuals and entities in particular, their impact is far-reaching and also affects other non-sanctioned business activities and payment transactions.

1 BANKING, FINANCE, AND TRANSFER RESTRICTIONS

The asset freezes targeting specific individuals, entities and organisations listed in the annexes of the corresponding EU regulations and Swiss ordinance remain the focal point of the respective sanctions regimes. The freezing of funds means that any movement or transfer that would enable the use of funds is prevented.¹ Funds are defined as financial assets of any kind, including but not limited to cash, bank deposits, securities, debt instruments, bonds, interest and dividends.²

The freezing of economic resources entails the prevention of the use of economic resources to obtain funds, goods or services in any way, including, but not limited to, by selling, hiring or mortgaging such assets.³

¹ Art. 1 lit. f Council Regulation (EU) No 269/2014.

² Art. 1 lit. g Council Regulation (EU) No 269/2014.

³ Art. 1 lit. e Council Regulation (EU) No 269/2014.

Economic resources include all types of assets, whether tangible, intangible, movable or immovable, in particular real estate property and luxury goods such as works of art, motor vehicles and aircraft.⁴ While freezing orders under the EU sanctions are aimed at preventing the use of the targeted assets, these sanctions do not entail confiscation of these assets.

Funds and economic resources “owned or controlled by” the designated entities are also subject to the freeze. While “ownership or control” is not precisely defined in the corresponding EU Regulation, the EU has issued previous guidance stating that ownership is assumed if a person owns more than 50% of the proprietary rights of an entity or maintains a majority interest.⁵ Thus, most subsidiaries of sanctioned companies may also be affected by the freeze.

For both the EU and Switzerland, the release of frozen assets may be authorised in exceptional cases, notably to fulfil certain contractual obligations which arose prior to 23 February 2022 by 24 August 2022.⁶ The respective legislation also includes carve-out exemptions from the financial restrictions for non-sanctioned Russian dual citizens or residents (i.e. Russian individuals holding dual Swiss or EU citizenship or a residence permit in the EU or Switzerland).

However, there are differences between the EU and Swiss sanctions regimes. For example, the Swiss sanctions, unlike their EU equivalents, apparently do not extend to related parties (e.g. family members).

In connection with the asset freezes, businesses should note that persons or institutions who hold, manage or have knowledge of funds and economic resources presumably subject to the freeze have a reporting obligation. In Switzerland, such reports must be made without delay to the State Secretariat of Economic Affairs (SECO).⁷

⁴ Art. 1 lit. d Council Regulation (EU) No 269/2014.

⁵ Guidelines of the General Secretariat of the Council p. 3. For the definition of control see p. 3 ff.

⁶ Art. 4 to 6b Council Regulation (EU) No 269/2014; Art. 15 (4) Swiss Ordinance on measures in connection with the situation in Ukraine.

⁷ Art. 16 Swiss Ordinance on measures in connection with the situation in Ukraine.

Businesses may also be affected by the restrictions which prohibit credit institutions from accepting deposits from Russian origin which would cause individual accounts to exceed a total amount of EUR or CHF 100,000. Also, the sale of transferable CHF and EUR denominated market securities to Russian companies and individuals is limited.

Under the current EU and Swiss sanctions, seven Russian⁸ and three Belarussian banks⁹ as well as legal entities established in Russia whose direct or indirect ownership by one of these banks exceeds 50 percent, are prohibited from accessing SWIFT.¹⁰ Given that SWIFT is used by most banks to process instructions, this ban severely restricts the ability of banned banks to conduct international business.

According to the EU sanctions, a person or institution which in good faith and in accordance with the EU sanctions freezes funds or economic resources, shall not be held liable unless the freezing order was a result of negligence. The Swiss sanctions do not contain a specific liability-waiver; however, persons who freeze assets will presumably not be held liable if the action was performed in good faith and based on reasonable suspicion. This view is supported by the fact that the Swiss sanctions require the reporting of all assets that presumably are within the scope of the asset freeze.

Some banks, including Sberbank and Gazprombank, are also affected by the prohibition on the trading of transferable securities and money market instruments of certain maturities issued by these banks.¹¹

2 EXPORT BANS AND TRADE RESTRICTIONS

The EU and Switzerland have introduced a ban on all transactions with specific Russian state-owned companies and their subsidiaries,¹² as well as

⁸ Promsvyazbank, Sovcombank, VTB Bank, Vnesheconombank, Bank Otkritie, Bank Rossiya, and Novikombank.

⁹ Belagroprombank, Bank Dabrabyt, and the Development Bank of the Republic of Belarus

¹⁰ Art. 5h Council Regulation (EU) No 833/2014.

¹¹ Art. 5 Council Regulation (EU) No 833/2014; Art. 18 Swiss Ordinance on measures in connection with the situation in Ukraine.

¹² Art. 5aa Council Regulation (EU) No 833/2014; Art. 24a Swiss Ordinance on measures in connection with the situation in Ukraine.

a prohibition on new investments in the Russian energy sector.¹³ The EU and Swiss sanctions provide for restrictions on the sale, supply, transfer or export to (or for use in) Russia of dual-use goods and technology, as well as listed goods and technology which might contribute to the enhancement of Russia's defence and security sectors. The restrictions also target goods and technology for use in oil refinement,¹⁴ aviation and space industries,¹⁵ maritime navigation,¹⁶ and the energy sector.¹⁷ Most recently the EU, and Switzerland have introduced an export ban on iron and steel products¹⁸ as well as on luxury goods.¹⁹ Restrictions also apply, *inter alia*, to the provision of related technical or financial assistance and financing.

EU member states may authorise the sale, supply, transfer, or export in limited instances, including – subject to certain conditions – for categories of goods and technology due under contracts concluded before 26 February 2022. However, such authorisations must be sought prior to 1 May 2022. In Switzerland, exceptions may be granted for activities intended for civilian purposes but applications must be submitted by 8 May 2022.

3 CONSEQUENCES OF NON-COMPLIANCE

In the EU, the respective member states are responsible for defining the rules on penalties in case of violations of the sanctions, including the intentional circumvention of the sanctions, clarifying that breaches committed without knowledge of or reasonable cause to suspect an infringement shall not give rise to liability of any kind.²⁰ In Switzerland,

¹³ Art. 3a Council Regulation (EU) No 833/2014.

¹⁴ Art. 3b Council Regulation (EU) No 833/2014.

¹⁵ Art. 3c Council Regulation (EU) No 833/2014.

¹⁶ Art. 3f Council Regulation (EU) No 833/2014.

¹⁷ Art. 2 para. 7 (iii) Council Regulation (EU) No 833/2014.

¹⁸ Art. 3g Council Regulation (EU) No 833/2014; Art. 14a Swiss Ordinance on measures in connection with the situation in Ukraine.

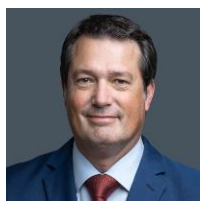
¹⁹ Art. 3h Council Regulation (EU) No 833/2014; Art. 14b Swiss Ordinance on measures in connection with the situation in Ukraine.

²⁰ Art. 8 (1), 9 and 10 Council Regulation (EU) No 833/2014 and Art. 10 (2), 12 and 15 Council Regulation (EU) No 269/2014.

violations of the sanctions may be punished with a prison sentence or a monetary penalty.²¹

The sanctions related to the situation in Ukraine are the result of unprecedented coordination by the international community, including the US, Canada, Australia, the EU, the UK and Switzerland. LALIVE will continue to monitor these changing sanctions and their effects as the situation develops.

For further questions or comments about this topic, please contact the authors:



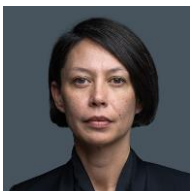
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²¹ Art. 32 Swiss Ordinance on measures in connection with the situation in Ukraine and Art. 9 and 10 Embargo Act.