



Welcome to the

ICC Digital Lunch Break #9

15 July 2022, 13:00 – 13:00 (CET)

**“An international perspective on
the Ukraine-/Russia-related
sanctions”**

with Cristina Brayton-Lewis, Partner and
Sara Nordin, Partner, White & Case LLP



Contents

- **Key highlights on US and EU sanctions developments**
- **Recommendations**

Introduction – the international perspective

- The conflict between Russia and Ukraine has resulted in many countries imposing sanctions against Russia. Countries or territories imposing such sanctions include:



United States



European Union



United Kingdom



Japan



South Korea



Singapore



Canada



Australia



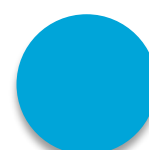
New Zealand



Switzerland



Taiwan



Others (Iceland,
Bahamas, etc.)

- Importantly, while there is some coordination, different sanctions regimes are not aligned



Key highlights on US and EU sanctions developments

A variety of US sanctions...



- ❑ **Comprehensive sanctions:** Crimea, Donetsk People's Republic, Luhansk People's Republic
- ❑ **Blocking Measures:** Blocking of all property and interests in property of SDN and 50% or greater owned entities
- ❑ **New Debt/Equity Restrictions:** Restrict new equity or new "debt" of greater than specified tenor
- ❑ **Correspondent/Payable Through Account Restrictions**
- ❑ **Sovereign Debt Restrictions**
- ❑ **Restrictions on Central Bank of Russia**
- ❑ **Ban on US dollar-denominated banknotes**
- ❑ **Import Restrictions:** Energy, seafood, alcohol, diamonds, gold
- ❑ **New Investment:** Restricts "new investment" in Russia & Russia's energy sector
- ❑ **Prohibition on accounting, auditing, and corporate management services**

...and US export controls



- ❑ **Controls imposed on all items on Commerce Control List**
- ❑ **Expanded jurisdiction over non-US made products that are the “direct product” of US software and technology**
- ❑ **Expanded Military End Use/End User Restrictions**
- ❑ **Entity List designations**
- ❑ **Luxury Goods Controls** (includes items not on Commerce Control List – e.g., tobacco)
- ❑ **Expanded Energy Sector Controls (Oil Refining)** (includes items not on Commerce Control List)
- ❑ **Industrial Goods Controls** (includes items not on Commerce Control List – e.g., icemakers)
- ❑ **Revocation of License Exception for Aviation:** Aircraft restricted from flying to Russia
- ❑ **Temporary Denial Orders Imposed on Russian Airlines**
- ❑ **“Aircraft in Violation” List:** all services prohibited

Top five US-specific issues



US Nexus

Does the transaction have a US nexus?

- Any involvement of the United States or a “US Person” (e.g., citizen, green card holder, person located in the United States)
- Can be triggered by US dollars, as could result in involvement of US bank in transaction

Secondary Sanctions

Even without a US nexus, is there sanctions risk?

- Non-US persons can be subject to sanctions for engaging in “Sanctionable activity,” even with no US nexus
- Risk of sanctions depends on activity and parties involved

Blocking

Does the transaction involve the “interest” of a blocked party?

- Broad definition of “interest” in property
- Rapidly expanding US SDN List and changing ownership interests

Export Controls

Does the transaction involve controlled items or technology?

- Many items controlled for export, reexport, and in-country transfer to Russia (including items not normally “controlled” – like laptops)
- Controls also apply to many non-US items

Facilitation/Causation

Does it facilitate/cause prohibited activity?

- US persons may not facilitate activity prohibited as to US persons by non-US persons
- Non-US persons may not cause US persons to engage in prohibited activity

A long list of EU sanctions measures...



- **Many new asset freeze designations:** Russian banks, businesspersons/oligarchs, family members, etc.
- **SWIFT exclusion** of certain listed Russian banks and their Russian subsidiaries (but not EU subs, etc.)
- **Extended capital market sanctions** – e.g., removal of maturity threshold and extension to Russian government, transaction ban on reserve/asset management of Russian Central Bank
- **Various financial services restrictions in relation to Russian nationals** – e.g., deposits, crypto wallet services, EU central security depository services, sale/supply of EUR denominated transferable securities or banknotes, trust services
- **Export bans:** Dual-use, “high-tech”/chemicals, oil/gas equipment, maritime navigation, aviation/space (incl. jet fuel), luxury goods, industrial goods
- **Import bans:** Oil, iron/steel, coal, “significant revenue” goods (caviar)
- **Investment/transaction bans:** Russia’s energy sector, listed State-Owned Entities (Rosneft, etc.), RDIF
- **Services ban:** Accounting, business management consulting, etc. to Russian government or companies
- **Transport bans:** Air/fly ban, vessel port access and road transport restrictions
- Trade and investment bans in relation to **Donetsk and Luhansk Republics** (in addition to Crimea)
- **Outlook:** Russian gold next?

Top five EU-specific issues



EU Nexus

When do EU sanctions apply to non-EU subsidiaries?

- *EU sanctions do not apply extraterritorially, so possible that EU sanctions do not apply to Russian operations*
- *But can be difficult to manage for global operations/teams*

Asset Freeze

Ownership and control by designated persons

- *Rapidly expanding EU asset freeze list and ownership structures can change (and/or limited information available)*
- *How can you exclude the risk of control and make payments? Varying approaches by Member States (e.g. VTB Europe)*

Trade Restrictions

Which products/shipments are covered, and related services

- *EU product scope driven by tariff classification, with confusing exceptions/derogations (pre-existing contracts)*
- *Also covers financing, financial assistance, technical assistance, brokering and "other services" (payment processing)*

Circumvention

Does it broadly cover any restructuring of a transaction?

- *Does not cover all non-EU operations or restructuring of transactions (must be knowing and intentional)*
- *Varying approaches by companies depending on structure and risk tolerance*

Diligence

No reasonable cause to suspect a sanctions violation

- *Screening becoming more common across sectors to mitigate risk*
- *Important to document reasoning and keep diligence records when sanctions scope not always clear-cut*



Recommendations

Watch out for differences between EU and US sanctions

□ **Diverging sanctions lists and blocking/asset freeze scope concepts**

- US 50% Rule
- EU ownership/control, with exceptions (and differing EU MS approaches)

□ **Precise blocking/asset freeze restrictions differ**

- US focus on prohibiting any dealings with blocked parties or blocked property, licensing available
- EU focus on whether any funds/economic resources made available to the asset freeze target or if assets frozen, with limited licensing grounds

□ **Approach to new investment bans and capital market sanctions**

- US new investment ban and new equity/debt restrictions broad in scope
- EU new investment ban in Russian energy sector only, new loan/credit ban more targeted

□ **Scope of export controls/trade restrictions**

- EU “high-tech” restrictions mirror US controls, but differences in overall product scope
- However, broader US impact on EU (and other) export controls going forward?

Diligence and screening

- Lots of measures but no full embargo (yet) – means business still possible, but heightened diligence standard and scrutiny overall
- Important to know and check all parties to a Russia-related transaction
- Prepare to manage multi-jurisdictional assessments and possible need for licensing in multiple jurisdictions
 - E.g., Chelsea FC
- Screening of counterparties, including shareholders, becoming more common and expected
 - Including through automated screening tools to make process easier
- May have to take into account conflicting interests
 - Possible Russian counter-sanctions, safety of local Russian staff

▶ Thank you





Time for your questions for

**Cristina Brayton-Lewis und Sara Nordin,
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Next Digital Lunch Break:

12 August 2022, 12:00-12:30 (CET)

„Aktuelle Herausforderungen in internationalen Lieferketten“

Katharina Klenk-Wernitzki, Luther Rechtsanwaltsgesellschaft mbH

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