

EU, UK, Japan and Australia impose sanctions on Russia

The European Union, in tandem with the United States, UK, Japan and Australia has approved the first round of sanctions against Russia in response to the decision by the Russian Federation to proceed with the recognition of the sovereignty of two Russia-backed regions in eastern Ukraine: the Donetsk and Luhansk People's Republics, and the subsequent decision to deploy troops in the two regions. Other countries (i.e. Switzerland) said they will not act immediately.

A. European Union

Asset Freeze on Designated Individuals and Entities

The EU has adopted Council Regulation (EU) 2022/259¹ imposing sanctions in the form of an asset freeze on individuals and entities which have been added on the list of Annex I of Council Regulation (EU) 269/2014.² The new designations include all 351 members of the Russian State Duma, who voted on February 15, 2022 in favor of the appeal to President Putin to recognize the independence of Donetsk and Luhansk. Additionally the EU regulation designates 27 individuals and entities who are considered to play a role in “undermining or threatening the territorial integrity, sovereignty and independence of Ukraine”.³ These include members of the government, banks, including VEB Bank, Promsvyazbank, and Bank Rossiya, as well as business people who are considered to be providing financial or material support to Russian operations in the Donetsk and Luhansk territories. The list of designated persons and entities was published in the Official Journal of the European Union.⁴ With the new designations, the restrictive measures

¹ Council Regulation (EU) 2022/259 of February 23, 2022 amending Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, OJEU L421 of 23.2.2022, at p.1, available at: <https://eur-lex.europa.eu/legalcontent/EN/TXT/?uri=OJ:L:2022:0421:TOC>

² Council Regulation (EU) No 269/2014 of March 17, 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty, and independence of Ukraine OJ L78 of 17.3.2014 at p.6, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014R0269>

³ Council of the EU, EU adopts package of sanctions in response to Russian recognition of the non-government controlled areas of the Donetsk and Luhansk oblasts of Ukraine and sending of troops into the region (Feb 23, 2022), available at: <https://www.consilium.europa.eu/en/press/press-releases/2022/02/23/russian-recognition-of-the-non-government-controlled-areas-of-the-donetsk-and-luhansk-oblasts-of-ukraine-as-independent-entities-eu-adopts-package-of-sanctions/>.

⁴ Council Implementing Regulation (EU) 2022/260 of 23 February 2022 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine OJEU L421 of Feb 23, 2022 at p.5 and Council Implementing Regulation (EU) 2022/261 of 23 February 2022 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine

imposed pursuant to Council Regulation (EU) 269/2014 now reach 555 persons and 52 entities.⁵

Import and export bans, restrictions on trade and investments related to the Donetsk and Luhansk areas

The EU has also adopted Council Regulation (EU) 2022/263⁶ imposing import and export bans and trade and investment-related restrictions targeting certain sectors of the economies of the Donetsk and Luhansk territories. In particular, the said Regulation (EU) 2022/263 imposed the following prohibitions which very closely track the trade sanctions imposed in relation to the Russian annexation of Crimea in 2014:

- a prohibition to import into the EU goods originating in the Donetsk and Luhansk territories. Similarly, the provision of financing and insurance in relation to the import of those goods is also prohibited. The prohibition does not apply to trade contracts pre-dating February 23, 2022, which will have to be wound down by March 24, 2022 and the import of goods originating in the Donetsk or Luhansk territories for which a certificate of origin has been issued in accordance with the EU-Ukraine Association Agreement.
- - a prohibition to acquire or extend any existing participation in ownership of real estate and entities in the Donetsk and Luhansk territories, provide financing to entities in those territories, create joint ventures, provide investment in relation to the aforementioned activities.
- - a prohibition to sell, supply, transfer or export the goods and technology listed in the Annex II of Council Regulation (EU) 2022/263 to any person in the Donetsk and Luhansk territories or for use in these territories. The prohibition targets goods and technologies suited for use in the transport, telecommunications, energy and the prospecting, exploration, production of oil, gas and mineral resources

ST/6489/2022/INIT OJ L 42I, Feb 23, 2022 p. 17, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2022:042I:TOC>.

⁵ Council of the EU, EU adopts package of sanctions in response to Russian recognition of the non-government controlled areas of the Donetsk and Luhansk oblasts of Ukraine and sending of troops into the region (Feb 23, 2022), available at: <https://www.consilium.europa.eu/en/press/press-releases/2022/02/23/russian-recognition-of-the-non-government-controlled-areas-of-the-donetsk-and-luhansk-oblasts-of-ukraine-as-independent-entities-eu-adopts-package-of-sanctions/>.

⁶ Council Regulation (EU) 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, OJEU L42I of Feb. 23, 2022, p.78, available at: <https://eurlex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2022:042I:TOC>

sectors of economy. The list of goods is extensive and as well as including a ban on the export to these regions of tanks and other military vehicles and spacecraft, also includes much more mundane products such as domestic washing machines, typewriters, pencil sharpeners, and book binding equipment. The provision of technical assistance or brokering services, financing and financial assistance in relation to the goods and technology listed in Annex II is also prohibited.

- a prohibition to provide technical assistance, or brokering, construction or engineering services relating to infrastructure in the territories of Luhansk and Donetsk in the aforementioned sectors of economy have also been prohibited, except for contracts pre-dating February 23, 2022.
- a prohibition to provide services related to tourism activities in the Donetsk and Luhansk territories.

Financial Restrictions

The EU's third regulation is Council Regulation (EU) 2022/262⁷ amending Council Regulation (EU) 833/2014 and introducing a sectorial prohibition to deal with transferable securities and money-making instruments issued after March 9, 2022 by the Russian Federation, its government or Central Bank or any legal person acting on their behalf and provide to them any new loans or credit. These restrictions mirror those imposed on a specified list of Russian state owned banks and corporations imposed after the Russian occupation of Crimea. Certain loans and credits that have a specific and documented objective to provide financing for nonprohibited imports or exports of goods and non-financial services, including the expenditure of goods and services from another third State may be exempt from this prohibition.

Other Measures

In parallel, on February 21, 2022, the EU listed five persons, including three members of the State Duma of the Russian Federation, who were elected to represent the annexed Crimean peninsula and the city of Sevastopol, and two senior officials of the Sevastopol electoral commission.⁸

⁷ Council Regulation (EU) 2022/262 of 23 February 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine, OJEU L421 of Feb. 23, 2022, at p.74, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2022:0421:TOC>.

⁸ Council of the EU press release, Ukraine's territorial integrity: EU sanctions five persons involved in the Russian State Duma elections of September 2021 in illegally -annexed Crimea, (Feb 21, 2022), <https://www.consilium.europa.eu/en/press/press-releases/2022/02/21/ukraine-s-territorial-integrity-eu-targets-five-more-individuals-with-restrictive-measures/>. See also Annex I of Council Regulation (EU) No 269/2014

On-going Developments

On February 24, 2022, further to the announcement by Russia of a special military operation in Ukraine, the President of the European Council urgently convened a special meeting.⁹ It is expected that during the meeting a second round of sanctions may be presented for approval. The new sanctions package may potentially target strategic sectors of the Russian economy by blocking their access to technologies and markets that are key for Russia. According to the President of the European Commission, Ursula von der Leyen, the EU “will freeze Russian assets in the European Union and stop the access of Russian banks to European financial markets”. This package of sanctions will also be discussed in close coordination with the EU allies.¹⁰ We will report on those sanctions when they are published.

B. UK

On Tuesday February 22, 2022 the UK froze the assets and imposed travel bans on 3 Russian nationals connected to the Kremlin, Gennady Timchenko, Boris Rotenberg and Igor Rotenberg. In addition, the UK has designated 5 Russian banks including Bank Rossiya, Black Sea Bank for Development and Reconstruction, IS Bank, Genbank and Promsvyazbank.¹¹ As with any such designation it is now prohibited for a British national or permanent resident of the UK, or for foreign nationals or entities within the UK, to conduct business with these banks and individuals.

In addition, UK has announced that it will (i) sanction those members of the Russian Duma and Federation Council who voted to recognize the independence of Donetsk and Luhansk; (ii) extend the trade ban imposed on Crimea to the Donetsk and Luhansk territories.¹² The UK has declared to have prepared an “unprecedented package of further

⁹ See European Council, Special meeting of the European Council, 24 February 2022, <https://www.consilium.europa.eu/en/meetings/european-council/2022/02/24/>

¹⁰ European Commission, Press statement by President von der Leyen on Russia's aggression against Ukraine, (Feb 24, 2022), available at: https://ec.europa.eu/commission/presscorner/detail/en/statement_22_1322.

¹¹ Office of Financial Sanctions Implementation, Financial Sanctions Notice (Feb 22, 2022), available: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1056386/Notice_Russia_22022022.pdf.

¹² UK Government press release, UK hits Russian oligarchs and banks with targeted sanctions: Foreign Secretary's statement (Feb 22, 2022), available at: <https://www.gov.uk/government/news/uk-hits-russian-oligarchs-and-bankswith-targeted-sanctions-foreign-secretary-statement>.

sanctions”¹³ “designed in time to hobble the Russian economy”¹⁴, in the event of further aggressive acts.

Today, following the escalation of events in Ukraine, the second round has been announced but not all of it has been put into legal effect.¹⁵

Effective today, an additional set of individuals and entities have been subjected to an asset freeze. These are: Denis Alexandrovich Bortnikov, Petr Fradkov, Elena Alexandrovna Georgieva, Kirill Nikolaevich Shamalov, Yury Slyusar, UralVagonZavod, PJSC United Aircraft Corporation, PJSC United Shipbuilding Corporation, Rostec, JSC Tactical Missiles Corporation, and VTB Bank.

Announced but not yet put into law are the following measures, with legislation expected to be laid before Parliament next week for these measures:

- The designation of, and imposition of an asset freeze against all major Russian banks;
- A prohibition on the Russian state and Russian companies from accessing the UK’s capital markets;¹⁶
- The designation, and imposition of an asset freeze against more than 100 individuals and entities said to be supportive of Russian President Vladimir Putin’s actions.
- A ban on aircraft operated by the airline Aeroflot in UK airspace;
- A cap of £50,000 on the permissible value of bank deposits by Russian nationals; and
- A suspension of the licensing of the export of dual-use goods to Russia.

¹³ Id.

¹⁴ Reuters, UK PM Johnson vows massive sanctions against Russia, available at: <https://www.reuters.com/world/europe/uk-will-slap-unprecedented-sanctions-russia-britain-says-2022-02-24/>.

¹⁵ The announcement can be found at <https://www.gov.uk/government/news/foreign-secretary-imposes-uks-most-punishing-sanctions-to-inflict-maximum-and-lasting-pain-on-russia>

¹⁶ The extent to which the prohibition against Russian private companies from accessing the capital markets in the UK is applied to only Russian-incorporated companies, or all companies owned by Russian nationals remains to be seen.

The UK has also stated that similar sanctions to those imposed on Russia will be imposed upon Belarus for permitting Russia to stage forces in its territory, but the detail of who might be effected is yet to be published.

In addition new legislation has been promised which will prohibit the export of dual-use goods to Russia, and also the export of certain categories of technical communications and electronic equipment, aerospace equipment and machinery and equipment for the refining of oil and gas.

The British government has further announced that it is working with other governments towards excluding Russia from the SWIFT banking system.

It has also been announced that in the next few weeks an Economic Crime Bill will be put before parliament which is intended to target the assets of Russian nationals held in the UK. This will include expanded “Unexplained Wealth Orders” which enable the British government to confiscate funds the source for which a defendant cannot legitimately explain.

Lastly, the creation of a new enforcement unit for Russian sanctions has been announced to form part of the National Crime Agency. This is a significant change as previously all sanctions enforcement was done by the Office of Financial Sanctions Implementation. We will provide details on the many upcoming sanctions measures as and when they are published.

C. Canada

Canada’s Prime Minister Justin Trudeau, announced on February 22, 2022 that Canada will be imposing new sanctions under the *Special Economic Measures (Russia) Regulations*¹⁷ and the *Special Economic Measures (Ukraine) Regulations*.¹⁸ The new measures mirror the actions of Canada’s partners and international allies and consist of:

- i. Restrictions on dealings with those members of the Russian State Duma who voted for the decision to recognize the independence of the Donetsk and Luhansk;
- ii. A ban on trade with the non-government controlled areas of Donetsk and Luhansk;
- iii. Prohibitions on direct and indirect dealings in Russian sovereign debt; and

¹⁷ Special Economic Measures (Russia) Regulations, SOR/2014-58.

¹⁸ Special Economic Measures (Ukraine) Regulations, SOR/2014-60.

- iv. Designation of two significant Russian financial institutions in order to “hinder Russia’s ability to further fund its aggressive actions.”¹⁹

D. Japan

On February 23, 2022, the Japanese Prime Minister Fumio Kishida announced the first package of sanctions consisting of three parts:

- i. Travel bans and asset freezes on Donetsk and Luhansk officials;
- ii. An import/export ban of goods from the Donetsk and Luhansk areas; and
- iii. A ban on the issuance and trading of new Russian sovereign bonds in Japan.

These sanctions will be imposed as soon as the “procedures” are established. The Japanese Prime Minister has further announced that it will keep on working with its G7 partners to take further actions in the future. This would include discussing security of energy supply and soaring of oil prices.²⁰

E. Australia

The Prime Minister of Australia has announced the “first tranche” of sanctions against Russia in coordination with its allies. Under this first phase, Australia is imposing the following sanctions:

- i. Travel bans and targeted financial sanctions on eight members of Russia’s Security Council;
- ii. (ii) Asset freeze on Rossiya Bank, Promsvyazbank, IS Bank, Genbank and the Black Sea Bank for Development and Reconstruction;
- iii. (iii) Restrictions on investment by Australian citizens in the state development bank VEB; and
- iv. (iv) Trade restrictions in the regions of Donetsk and Luhansk in the transport, energy, telecommunications, and oil, gas and minerals sectors.

¹⁹ Prime Minister of Canada press release, Canada announces support to address the situation in Ukraine (Feb 22, 2022), available at: <https://pm.gc.ca/en/news/news-releases/2022/02/22/canada-announces-support-addresssituation-ukraine>.

²⁰ Prime Minister’s Office of Japan, Press conference on sanctions based on the situation in Ukraine (Feb 23, 2022) available at: https://www.kantei.go.jp/jp/101_kishida/statement/2022/0223kaiken.html. (original in Japanese).

In addition to the above, Australia will amend the *Autonomous Sanctions Regulations 2011* to extend the scope of the persons and entities that can be listed to include those of ““strategic and economic significance to Russia””.²¹

Australia is also expediting the approval of Australian visas to Ukrainian citizens. Australia has further welcomed the decision by Germany to suspend the Nord Stream 2 gas pipeline project.²²

F. Switzerland

So far, Switzerland has condemned Russia’s recognition of two breakaway regions earlier this week. Switzerland however has not announced the imposition of sanctions. In a statement of the Federal Council, Switzerland declared it “may adopt compulsory measures to enforce sanctions adopted by the United Nations, the OSCE or Switzerland’s main trading partners in order to ensure compliance with international law, in particular in respect for human rights.”²³ Switzerland has also declared that it must not be used “as a platform to circumnavigate EU sanctions”.²⁴ Switzerland often pursues this policy while not imposing its own asset freeze for assets already in Switzerland, it prohibits transfers into Switzerland by people designated under EU sanctions.

We expect further developments in U.S. sanctions.

About Curtis

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²¹ Media Statement by Australia, Prime Minister, Minister of Foreign Affairs, Australia Response to Russia’s aggression against Ukraine (February 23, 2022), available at: <https://www.pm.gov.au/media/australias-responserussias-aggression-against-ukraine>.

²² On February 23, 2022, the U.S. Department of Treasury further designated the Nord Stream 2 project as a SDN and issued a GL4 authorizing wind-down activities until March 2, 2022. Press release available at: https://home.treasury.gov/policy-issues/financial-sanctions/recent-actions/20220223_33.

²³ Switzerland Federal Council press release, Eastern Ukraine: Federal Council condemns Russian action in violation of international law (Feb 23, 2022), available at: <https://www.admin.ch/gov/en/start/documentation/mediareleases.msg-id-87316.html/>.

²⁴ Id.

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