

The EU Adopts the “Maintenance and Alignment” Sanctions Package

On July 21, 2022, the EU Council adopted new measures intended to both tighten and relax existing economic sanctions targeting Russia. We detail the main measures below:

Trade restrictions¹

Ban on imports of gold: The package introduces a new prohibition against the purchase, import, or transfer, directly or indirectly, of gold, if it originates in Russia and it has been exported from Russia into the EU or any third country after 22 July 2022. This prohibition extends to gold in any form including unwrought gold, gold coins and gold jewelry. Ancillary services such as brokering, technical assistance, financing, financial assistance and “other services” are also prohibited.²

Export control on goods which may enhance Russia’s military and technological capacities: The package extends the list of controlled items, which may contribute to Russia’s military and technological enhancement or the development of its defence and security sector.

Extension of the port access ban: The prohibition on port access is extended to locks in order to avoid circumvention of sanctions.

Extension of the prohibition on deposits: The prohibition against accepting new deposits in excess of €100,000 has been extended to deposits from legal persons, entities or bodies established in third countries and directly or indirectly majority-owned by Russian nationals or natural persons residing in Russia (unless they are also EU or EEA nationals). In addition, the acceptance of deposits from non-prohibited cross-border trade will be subject to prior authorization by national competent authorities. How this prior authorization process will work in practice has not been explained.

¹ Council Decision (CFSP) 2022/1271 of 21 July 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine, OJ L 193, 21.7.2022, p. 196–218. Council Regulation (EU) 2022/1269 of 21 July 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine, OJ L 193, 21.7.2022, p. 1–132.

² Also see EU Commission FAQs on Gold imports are available at: https://ec.europa.eu/info/sites/default/files/business_economy_euro/banking_and_finance/documents/faqs-sanctions-russia-gold-imports_en.pdf.

Prohibition against providing credit rating services: the regulation includes a prohibition against providing credit rating services to any “legal person, entity or body established in Russia” as well as to Russian nationals or those residing in Russia.

Clarification of the scope of the prohibition on public procurement : The package introduces a limited exception to the prohibition against entering into any transactions with Russian public entities. The exception applies where the transaction is necessary to ensure access to judicial, administrative or arbitral proceedings in an EU member state, or the enforcement of such proceedings in a member state.

Exception to the prohibition against engaging in transactions with certain State-owned-enterprises: The exception applies to transactions for agricultural products and the supply of oil / petroleum products to third countries and was adopted to combat food and energy insecurity.

Exemption on technical assistance for aviation goods: The package allows the sharing of technical assistance with Russia for aviation goods and technology insofar as it is needed to safeguard the technical industrial standard setting work of the International Civil Aviation Organization.

Sanctions which might lead to food insecurity in the world: One of the recitals to the new Regulation 2022/1269, albeit not an operative provision of the regulation, contains the policy statement that the EU was committed to avoiding measures that target in any way the trade in agricultural and food products, including wheat and fertilizer, between third countries and Russia. The recital added that this policy includes the earlier regulations adopted in view of Russia’s actions destabilizing the situation in Ukraine.

Extension of the geographic scope of the exceptions to the prohibition to engage with certain SOEs: exception to the prohibition against transacting with SOEs for transactions necessary to satisfy the needs in certain commodities in the EU, such as natural gas, certain non-ferrous metals, aluminum and iron ore, was extended to include Switzerland, EEA and Western Balkans.

New designations and freezing asset measures

Additional listings of Russian individuals and entities:³ The new sanctions package adds 48 people and 9 entities to the EU’s Russia sanctions list. The designations include members from President Putin’s inner cycle. Entities designated include Sberbank, FORSS (a Russian company providing engineering services to the shipbuilding

³ Council Decision (CFSP) 2022/1272 of 21 July 2022 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, OJ L 193, 21.7.2022, p. 219–285.

industry), JSC Research and Production association (company operating in the electronics sector supplying the Russian Armed forces); the Federal Agency for the Commonwealth of Independent State Affairs Compatriots living abroad and International Humanitarian Cooperation.

Designations of Syrian mercenaries:⁴ In response to the Syrian provision of support (including military support) to Russia's aggression against Ukraine, the EU has added 4 people and 1 entity to its Syria sanctions list and 6 people and 1 entity to its Russia sanctions list. The entity sanctioned is Al-Sayyad Company for Guarding and Protection Services Ltd (also known as ISIS Hunters). The CEO of the company, Fawaz Mikhail Gerges, and co-owner Yasar Hussein Ibrahim have also been designated. The private security company is believed to have participated in the recruitment of Syrian mercenaries for the benefit of Russia forces.

New derogations from asset freezes:⁵ The package introduces the following derogations to asset freezes subject to authorization by the relevant National Competent Authority:

- The release of economic resources “*necessary for the urgent prevention or mitigation of an event likely to have a serious and significant impact on human health and safety or the environment*”. The condition to release the economic resources is that the proceeds from the release are frozen.
- The release of frozen funds and economic resources and/or the making available of funds or economic resources of and to certain listed banks and their subsidiaries: Bank Rossiya, PROMSVYAZBANK, VEB.RF, Otkritie FC Bank, Novikombank, Sovcombank, VTB Bank, and Sberbank. This exception is specific to “*the purchase, import or transport of agricultural and food products, including wheat and fertilisers*” This derogation is limited and does not extend to other companies (e.g. if a different designated company was in some way involved in the transaction or the transport of the goods in question).
- *Wind-down of operations, including correspondent banking relations, with Sberbank:* the competent authorities of a Member State may authorise the release

⁴ Council Implementing Regulation (EU) 2022/1275 of 21 July 2022 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria, OJ L 194, 21.7.2022, p. 8–1; Council Implementing Decision (CFSP) 2022/1277 of 21 July 2022 implementing Decision 2013/255/CFSP concerning restrictive measures against Syria, OJ L 194, 21.7.2022, p. 15–17.

⁵ Council Regulation (EU) 2022/1273 of 21 July 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, OJ L 194, 21.7.2022, p. 1–4.

of certain frozen funds or economic resources belonging to Sberbank that are necessary: (i) for the termination by 22 August 2023, of operations, contracts, or other agreements; (ii) for the completion, by 31 October 2022, of an ongoing sale and transfer of proprietary rights directly or indirectly owned by that entity in a legal person entity or body established in the EU; or (iii) for the sale and transfer by 31 December 2022, or within 6 months from the date of listing, whichever is latest, of proprietary rights in a legal person, entity or body established in the Union.

New reporting obligations – EU persons and designated persons

New reporting obligations for EU persons: EU persons were required to supply immediately any information which would facilitate compliance with the Council Regulation No. 269/2014, such as information on accounts and amounts frozen to the competent authority of the Member State where they are resident or located. Now, Council Regulation (EU) 2022/1273 extends this obligation to report information about *“funds and economic resources within Union territory belonging to, owned, held or controlled by [designated] natural or legal persons, entities or bodies... and which have not been treated as frozen by the natural and legal persons entities and bodies obliged to do so”*. As drafted the reporting obligation does not extend to all frozen assets, but only to those not being treated as frozen by the designated person/entity in question. It will not always be easy for the EU person with the reporting obligation to know how a particular asset is being treated.

- It should also be noted that the reporting obligation is expressly stated to override *“applicable rules concerning reporting, confidentiality and professional secrecy”*. A recent FAQ issued by the EU Commission refers to the reporting obligation “trumping” any prior agreements which had contained such confidentiality provisions.⁶ The same FAQ also specifies that what should be reported is “all relevant data including names, individual assets and dates of transfers”.
- In the same FAQ the EU Commission has further clarified that “information received as part of legal representation in court proceedings” would not trigger the reporting obligation.⁷ It is unclear whether the reference to “court proceedings” is

⁶ EU Commission FAQs on asset freeze and prohibition to make funds and economic resources available at:
https://ec.europa.eu/info/sites/default/files/business_economy_euro/banking_and_finance/documents/faqs-sanctions-russia-assets-freezes_en.pdf

⁷ EU Commission FAQs on asset freeze and prohibition to make funds and economic resources available at:
https://ec.europa.eu/info/sites/default/files/business_economy_euro/banking_and_finance/documents/faqs-sanctions-russia-assets-freezes_en.pdf

intended to exclude arbitration, but the Commission's view is clear that outside a contentious context legal privilege will not override the reporting obligation.

- As mentioned in our recent alert,⁸ the EU is currently proposing to include a new offence of “*failure to comply with any obligation to provide information to the authorities, such as the obligation to declare any assets belonging to, owned, held or controlled by a designated person/entity*”.⁹ This suggests that the more narrow formulation contained in Regulation 2022/1273 may be short lived. It will be a matter for the law of individual Member States whether a breach of this current reporting obligation is an administrative offence, a criminal offence, or no offence at all. This new obligation is in line with the EU Commission Whistleblower tool. This tool can be used to report on “past, ongoing or planned” EU sanctions violations, as well as attempts to circumvent any sanctions.¹⁰

New reporting obligations for listed individuals and entities: The sanctions package finally imposes the obligation on listed persons to report before 1 September 2022 or within 6 weeks from the date of listing in Annex I, whichever is latest, funds or economic resources within the jurisdiction of a Member State belonging to, owned, held or controlled by them, to the competent authority of the Member State where those funds or economic resources are located. The failure to comply with such obligation is stated to be an offence as it will be considered as circumvention of the asset freeze measures.¹¹

- This is the first time the EU has imposed a reporting obligation on sanctioned persons. The obligation is particularly burdensome, considering the short time-limits provided (September 1, 2022 or within 6 weeks from the designation). In addition, in cases where the funds or economic resources of sanctioned persons are located in multiple Member States, the reporting obligation will give rise to multiple filings. So far, the EU has not clarified which specific information needs

⁸ See Curtis Client Alert, The EU Undertakes Fundamental Reform of the Legal Basis for Sanctions Enforcement (July 20, 2022), available at: <https://www.curtis.com/our-firm/news/the-eu-undertakes-fundamental-reform-of-the-legal-basis-for-sanctions-enforcement>.

⁹ Communication from the Commission, Towards a Directive on criminal penalties for the violation of Union restrictive measures. Brussels 25.05.2022. COM(2022)249 final, available at: https://ec.europa.eu/info/sites/default/files/2_191746_comm_cri_ann_en.pdf.

¹⁰ European Commission, press release March 4, 2022, available at: https://ec.europa.eu/commission/presscorner/detail/es/mex_22_1541.

¹¹ The same view is repeated in the EU Commission FAQs on asset freeze and prohibition to make funds and economic resources available at: https://ec.europa.eu/info/sites/default/files/business_economy_euro/banking_and_finance/documents/faqs-sanctions-russia-assets-freezes_en.pdf

to be reported, or whether there will be a standardized reporting form. Finally, we expect that the violation of a specific obligation to report will be covered by the EU Commission Draft Directive on criminal penalties for the violation of Union restrictive measures that will be published in the coming months.

Protections as to the processing of confidential data: The Council Regulation (EU) 2022/1273, finally introduces an obligation on competent authorities of Member States, including enforcement authorities and administrators to process and exchange information including personal data with other competent authorities of the Member States and the Commission. Any processing of personal data shall be carried out in line with the protections provided under Regulations (EU) 2016/679¹² and (EU) 2018/1725¹³ and only in so far as necessary for the application of the Council Regulation (EU) No. 269/2014 and to ensure cooperation between Member states and the Commission.

New FAQs published

We note that on July 27, 2022, the EU Commission further updated its FAQs guidance. Some of these have already been dealt with, but others include:

- Oil reporting obligations under Article 3m(3) (Member States' obligation to report to the European Commission any application of the exemption from the prohibition to purchase crude oil or petroleum products) and 3m(10) (Member States' obligation to report to the European Commission amounts of crude oil falling under CN 2709 00 imported by pipeline):¹⁴ The FAQs clarifies that individual companies should not report the concluded contracts to the Commission. They should report them to Member States who will then report all of the contracts concluded for the import of oil into their own territory to the Commission, using a common template. As part of their reporting obligation,

¹² Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

¹³ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

¹⁴ EU Commission FAQs on reporting obligations under the Oil import restrictions are available at: https://ec.europa.eu/info/sites/default/files/business_economy_euro/banking_and_finance/documents/faqs-sanctions-russia-oil-reporting-obligation_en.pdf

companies will have to provide details on the volume per contract and if available the volume per single delivery.

Aviation:¹⁵ The EU Commission clarifies the exemption for the sharing of technical information in the framework of International Civil Aviation Organization. In accordance with the Guidance, technical data pertaining to EU manufactured products and components listed in Annexes XI and XX can be shared to contribute to the technical standard setting work within ICAO groups and panels even in cases where Russia is, among other countries, a member of these groups and panels. This measure does not amount to technical assistance to Russia. The provision of direct or indirect technical assistance to any natural or legal person, entity or body in Russia or for use in Russia remains otherwise prohibited.

Curtis is closely monitoring any legislative development. We will keep our clients and friends abreast of any new updates.

About Curtis

Curtis, Mallet-Prevost, Colt & Mosle LLP is a leading international law firm. Headquartered in New York, Curtis has 19 offices in the United States, Latin America, Europe, the Middle East and Asia. Curtis represents a wide range of clients, including multinational corporations and financial institutions, governments and state-owned companies, money managers, sovereign wealth funds, family-owned businesses, individuals and entrepreneurs.

For more information about Curtis, please visit www.curtis.com.

Attorney advertising. The material contained in this Client Alert is only a general review of the subjects covered and does not constitute legal advice. No legal or business decision should be based on its contents.

¹⁵ EU Commission FAQs on aviation are available at : https://ec.europa.eu/info/sites/default/files/business_economy_euro/banking_and_finance/documents/faqs-sanctions-russia-aviation_en.pdf.

Please feel free to contact any of the persons listed below if you have any questions on this important development:



Jacques Semmelman

Partner
jsemmelman@curtis.com
New York: +1 212 696 6067



Mark Handley

Partner
mhandley@curtis.com
London: +44 207 710 9821



Elena Klonitskaya

Partner
eklonitskaya@curtis.com
Brussels: +32 474 42 75 77



Edoardo Zucchelli

Partner
ezucchelli@curtis.com
Milan: +39 02 7623 2001



Ana Amador

Associate
aamador@curtis.com
Washington: +1 202 452 7366