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FOREIGN TRADE LAW

FOREIGN TRADE LAW UPDATE: EU ADOPTS NEW “MAINTENANCE AND ALIGNMENT” PACKAGE OF MEASURES AGAINST RUSSIA

The EU tightened existing economic sanctions against Russia on 21 July 2022 in response to Russia’s ongoing war of aggression against Ukraine. The new “maintenance and alignment” package of measures builds on the sanctions packages of 24 and 26 February 2022 ([newsletter of 28 February 2022](#)), 28 February/2 March 2022 ([newsletter of 7 March 2022](#)), 16 March 2022 ([newsletter of 18 March 2022](#)), 9 April 2022 ([newsletter of 12 April 2022](#)) and most recently 3/4 June 2022 ([newsletter of 9 June 2022](#)). The aim is to optimise and strengthen existing measures. The new sanctions include a ban on the import, purchase or transfer of Russian-origin gold, the country’s most important export commodity after energy. The G7 states had already agreed on this step at their recent summit in late June held in Elmau, Germany. The EU has also amended some of the trade-related and financial sanctions, expanding the list of products and technology under Annex VII of Regulation (EU) 833/2014. Further individuals and entities, including major Russian financial institution Sberbank, have also been listed. In a move to bolster the effectiveness of previous measures to freeze assets ([see our newsletter of 9 June 2022](#)), the EU has updated reporting requirements, with sanctioned persons now required to disclose and report their assets in the EU. In addition to tightening sanctions, the package also eases existing restrictions, with the aim of reducing negative consequences for global food and energy security. Exemptions have been extended to exports for medical purposes and petroleum products and foodstuffs, for example. Some existing sanctions have also been clarified.

EU sanctions

The EU’s **package of measures (Regulations (EU) 2022/1269 and 2022/1273 and Implementing Regulations (EU) 2022/1274 and 2022/1270)** tightens and adapts the existing sanctions against Russia. The measures affect in particular the **personal sanctions** in **Regulation (EU) 269/2014** and the **financial and trade sanctions** in **Regulation (EU) 833/2014**.

- ’ The EU has introduced personal sanctions against a further 54 individuals and ten entities, bringing the current totals to **1,229 individuals and 110 entities**. **Regulation (EU) No 269/2014** freezes funds and economic resources belonging to, owned or held by the persons listed in Annex I to the Regulation. No funds or economic resources may be made available, directly or indirectly, to or for the benefit of these persons. Natural persons are also banned from travelling to and through EU territories (see our newsletters of [7 March 2022](#), [12 April 2022](#) and [9 June 2022](#)).
- ’ The list in Annex I to the Regulation now includes six Syrian nationals as well as one entity involved in the recruitment of Syrian mercenaries to fight alongside Russian forces in Ukraine. The EU sees the Syrian regime as providing military support for Russia’s war of aggression against Ukraine. A number of further Russian politicians, including the mayor of Moscow, have been listed as well as entrepreneurs, soldiers and – to prevent circumventions – relatives of people already listed. The nationalist motorcycle club, the Night Wolves, and its members as well as a Russian actor and individuals spreading pro-Russian propaganda are now also on the list.
- ’ The EU has now also included **Sberbank**, a move that was already expected as part of the last sanctions package when other major financial institutions were listed. Sberbank is Russia’s largest bank and

- › accounts for about a quarter of aggregate Russian banking assets and a third of banking capital. It is largely owned by the Russian government and generates high revenues for it. While Sberbank was excluded from participating in SWIFT, the international payments system, as part of the third sanctions package ([see our newsletter of 7 March 2022](#)), this new listing and accompanying freezing of funds and other assets is tantamount to a complete ban on transactions. The EU has introduced one major exemption, however: The ban does not apply to payments relating to agricultural products. Listed banks can still process payments of this type.
- › As well as adding names to the list, the EU has expanded the personal sanctions in Regulation (EU) 269/2014, requiring listed persons to report assets they hold in the EU. This is to ensure effective and uniform implementation of the Regulation by Member States and to prevent circumvention of the asset freeze:
 - › This **disclosure and reporting requirement**, which has been introduced in Article 9(2) of the Regulation, applies to listed persons, entities or bodies from 1 September 2022 or within six weeks from the date of listing, whichever is later, towards the competent authority of the Member State where such funds or economic resources are located.
 - › Failure to comply is deemed circumvention of the freezing of assets and may be subject to a fine or even a criminal penalty under applicable national law.

The EU has also adopted measures expanding and tightening **financial and trade sanctions**:

- › The restrictions on **gold originating in Russia** have attracted extensive media coverage. They include a prohibition on the direct or indirect import, purchase or transfer of such gold as well as on providing related assistance or brokering services. The G7 states had already agreed on this step, which has been justified by the EU on the grounds that gold is Russia's most significant export after energy and that this move could help reduce Russia's revenues. The EU sees this as a clear signal of its determination to keep up the pressure on Russia for as long as Russia continues its aggression against Ukraine.
 - › The gold embargo introduced in Article 30 Regulation (EU) 883/2014 relates to gold originating in Russia and exported from Russia to the EU or a third country after 22 July 2022. This embargo applies not only to unprocessed gold, but also gold products that have been processed in a third country using sanctioned unprocessed gold. Exceptions apply to gold products for personal use of natural persons or for the official purposes of consular posts or international organisations.
 - › However, these restrictions are not likely to have far-reaching consequences in **practice**: For one thing, only about 5% of Russian gold exports go to the EU – however, the U.S. and the UK, both more significant buyers, have already adopted their own embargoes on Russian gold. The EU gold embargo will probably affect Germany even less than the EU as a whole: According to the Central Association of German Goldsmiths, Silversmiths and Jewellers, Germany buys most of its gold from refineries in which gold is recycled, and not from Russia directly. Since the previous sanctions already more or less excluded the six largest Russian gold producers from the European and U.S. markets from March onwards, this is not likely to have much more of an impact.
 - › Difficulty in determining the origin of the gold may also limit the effectiveness of these new measures, creating opportunities for circumventing the ban.
- › The package also **extends export controls on dual-use goods and advanced technology**. 50 entries have been added to the corresponding list in Annex VII to Regulation (EU) 833/2014. It now includes, for example, protective equipment for security forces and equipment needed for natural gas fracking and uranium enrichment, as well as special chemicals and machine tools, for example for manufacturing weapons or drills, and other high-tech goods.

However, in addition to these tightened restrictions, the new measures also **adjust** existing sanctions by expanding existing exemptions from bans on exports and transactions, on the one hand, and **optimising** or **clarifying** the scope of application, on the other.

- › The already existing **exemption** from the prohibition on transactions with certain state-owned enterprises ("**transaction ban**") has been expanded to include transactions relating to agricultural products and the supply of oil to third countries. The EU wants to avoid any measures that could cause food insecurity around

- › the world. The EU's measures are not aimed at the trade in agricultural and food products or pharmaceutical and medical products between third countries and Russia.
 - › Article 3k(5) Regulation (EU) 833/2014, new version, specifies that the competent authorities of the Member States may now grant licences for goods and technology that, strictly speaking, are subject to the export ban under Article 3k(1) Regulation (EU) 833/2014 in accordance with Annex XXIII if they have determined that such goods and technologies are necessary for medical, pharmaceutical or humanitarian purposes. This revision was necessary given that the list of goods in Annex XXIII that could contribute in particular to the enhancement of Russian industrial capacities is very wide-ranging and extensive ([see our last newsletter of 9 June 2022](#)).
 - › The amended Article 5aa(3) Regulation (EU) 833/2014 provides for similar exemptions from the bans in connection with petroleum products and foodstuffs. It now contains an exemption from the otherwise complete ban on transactions with the Russian companies listed in Annex XXI relating to petroleum and refined petroleum products, as well as agricultural products and foodstuffs.

- › The prohibition – introduced in Article 3ea(1) Regulation (EU) 883/2014 as part of the fifth sanctions package ([see our newsletter of 12 April 2022](#) – on providing access to ports in EU territory to any vessel registered under the flag of Russia has been expanded to include locks in order to ensure effective implementation of the sanction and to prevent circumvention, e.g. by transferring cargo just outside the port. An instance of this has supposedly already been witnessed in Northern Germany.

- › The EU has provided further **clarification** with regard to the prohibition in Article 5k Regulation (EU) 833/2014 concerning the award of public contracts. Furthermore, Article 3c(9) Regulation (EU) 833/2014 has been clarified so as not to impede the work of the International Civil Aviation Organisation on the establishment of technical industrial standards; the EU has also amended further regulations to ensure **access to justice**.

U.S. sanctions

- › The U.S. Treasury Department took a similar approach to the EU's current sanctions package on 14 June 2022, when it exempted transactions with Russian banks in the energy sector from sanctions up to 5 December 2022. Transactions relating to liquefied natural gas (LNG), petroleum products and natural gas, coal, wood, uranium and nuclear energy, as well as transactions relating to thermal energy and in the field of renewable energies, are now permitted again.

- › On 27 June 2022, in a joint statement in support of Ukraine, the G7 states expressed their intention to sustain and intensify international economic and political pressure on Russia and its enablers in Belarus through coordinated sanctions measures. The stated common aim is to isolate Russia from participating in the global market and reduce its revenues, as well as to restrict its access to industrial inputs and services which support its armament and technology sector. In line with this joint statement, the U.S. has likewise prohibited the import of Russian gold and imposed sanctions on 70 additional Russian entities and 29 individuals, mainly from the military-industrial sector. These personal sanctions primarily involve the aviation sector, including the key Russian companies UAC, Tupolev and Irkut.

- › Additional U.S. sanctions came into force on 7 July 2022, this time in relation to the Russian consulting sector. Under the new rules, U.S. companies and individuals are now prohibited from providing accounting, trust, and consulting services in Russia relating to corporate formation and management. We reported on these sanctions in [our newsletter of 9 June 2022](#).

Conclusion and outlook: maintenance and alignment, but not a “fully-fledged sanctions package”

While the G7 states have committed themselves to the common goal of optimising and intensifying the existing sanctions, there is no such agreement among all of the states currently imposing sanctions on Russia on the specific extent of these; not all of the Member States are on the same page with regard to the EU's sanctions policy. Since EU sanctions can only be decided unanimously by the Member States, this will continue to be a

problem in the future.

The objection is frequently raised, and not only from the Member States, that the sanctions are having less of an effect on Russia than on themselves. The African Union in particular has voiced such criticism, blaming the EU for the current food shortages. The EU therefore found it important, when adopting the “maintenance and alignment” package, to point out that none of these measures target in any way the trade in agricultural and food products between third countries and Russia. This also explains the exemptions described therein, which are aimed at avoiding any negative impact on global food security and medical care. The EU also clarified once again that its sanctions are not binding on third countries.

The extent of the newly enacted sanctions falls short of that of previous packages which is why the EU is not officially designating it as a sanctions package. This is not surprising given the large number of sanctions already in place. Nevertheless, these are important new rules whose impact should not be underestimated. The clarifications and adjustments the EU has now made (for example with regard to export authorisations pursuant to Article 3k(5) Regulation (EU) 833/2014) are to be welcomed. This is in response to possible “drafting errors” which crept in due to the need to adopt sanctions legislation as quickly as possible. The EU should continue this process and, for instance, allow for possible exemptions from the – very wide-ranging – import ban in Article 3i Regulation (EU) 833/2014 (for example if critical infrastructures/industries within the EU could be affected as a consequence of this ban – as can already be seen in practice).

Even if new far-reaching sanctions are not to be expected in the near future, it can be assumed that the current sanctions will remain in force for a long time – as recently as 26 July 2022, the EU resolved to extend them until 31 January 2023 – and that they will be further adjusted and optimised. It is therefore still important to keep a watchful eye not only on the existing EU and U.S. sanctions, but also on the equally extensive Russian countersanctions.

There has been another interesting development in the area of EU criminal sanctions: On 7 July 2022, the EU resolved to harmonise legislation on criminal sanctions – currently the purview of the individual Member States – throughout the EU. It would then be possible to adopt EU-wide minimum standards for the definition and prosecution of violations of EU sanctions, which the Member States would then transpose into national law.

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Foreign Trade Law

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