

STEWARTS

UK sanctions against Russia: a fast
moving area

EU Sanctions

- Russian economy
 - finance
 - energy
 - defence
 - dual-use goods
- 185 people 48 entities
- business in Crimea and Sevastopol
 - Import ban on goods from the territory
 - Export ban on certain goods and technologies
 - Ban on tourism services in Crimea and Sevastopol

UK Sanctions

- Russia (Sanctions) (EU Exit) Regulations 2019
 - laid before Parliament under section 55(3) of the Sanctions and Anti-Money Laundering Act 2018
 - came fully into force on 31 December 2020
 - replaces the existing EU Russia sanctions regimes in respect of Ukraine
 - intended to ensure that the UK can operate an effective sanctions regime in relation to Russia

Types of sanctions regimes

- Financial sanctions
- Travel sanctions
- Trade sanctions

STEWARTS

The Russia (Sanctions) (EU Exit) (Amendment) Regulations 2022

STEWARTS

Who is affected?

- businesses of economic significance to the Russian government
- businesses within a sector of strategic significance to the Russian government
- entities or persons affiliated with the Russian government, including those owning, controlling or working as a director or trustee of an affiliated entity.

Definition of affiliated entities

These include businesses which:

- are owned or controlled directly or indirectly by the government
- the Russian government holds a minority interest in (whether directly or indirectly);
- receives funding directly or indirectly from the Russian Direct Investment Fund or the National Wealth Fund, or otherwise receives a financial or material benefit from the Russian government

Sectors that are affected

- chemicals
- construction
- defence
- electronics
- energy
- extractives
- financial services
- information, communications and digital technologies; and
- transport

Additional future sanctions?

- Restricting access to Russian sovereign debt markets.
- Extending current trade sanctions.
- Extending travel restrictions to include further individuals.
- Targeted sanctions relating to the Nord Stream 2 pipeline.
- Removal of access to the SWIFT payment system.

Beware of sanctions divergence!

How to prepare for new sanctions?

- Undertake a risk assessment
- Update sanctions policies and procedures
- Engage with sanctions authorities
- Review contractual provisions
- Engage with banks and insurers
- Ascertain operational impact of sanctions
- Consider counter-sanctions
- Update customer due diligence records
- Update training decks
- EU, US or UK licences

STEWARTS

Questions?

dsavage@stewartslaw.com

U.S. Sanctions against Russia. Status and Takeaways

Natalia Abtseshko, Head of International Projects Group

MORE THAN MERE LEGAL SERVICES

VEGAS
LEX

Bills:

- The Never Yielding Europe's Territory (NYET) Act
- Defending Ukraine Sovereignty Act
- and others (*the Deterring Authoritarian Hostilities Act, Putin Accountability Act*)

Other measures:

- EAR cyber security revision
- Potential ban on high-tech products sale to Russia
- Enforcement actions

1

Defending Ukraine Sovereignty act (DUSA) – “the mother of all the sanctions”



Mandatory Sanctions on Financial Institutions

At least three from the following: Sberbank, VTB, Gazprombank, VEB.RF, The Russian Direct Investment Fund, Credit Bank of Moscow, Alfa Bank, Rosselkhozbank, FC Bank Otkritie, Promsvyazbank, Sovcombank, and Transkapitalbank



Sanctions on providers of specialized financial messaging services (e.g., SWIFT)

Also requires reporting on efforts to terminate services for sanctioned Russian financial institutions



Sanctions on extraction industries

Requires the President to identify and sanction sectors and industries the President determines should be sanctioned in the interest of United States national security, including oil and gas extraction and production; coal extraction, mining, and production; and minerals extraction and processing



Mandatory Sanctions on Officials

Requires sanctions on list of officials including President Putin, the Prime Minister, Foreign Minister, Minister of Defense etc.



Transactions on primary and secondary Russian sovereign debt

Status: Unclear – Congress negotiations on pause on DUSA

2

Never Yielding Europe's Territory (NYET) Act – the “stepmother of all the sanctions”?



Sanctions on Financial Institutions & “Secondary” Sanctions

- (i) VTB, VEB.RF, The Russian Direct Investment Fund, Alfa Bank;
- (ii) At least 4 of: Sberbank, Gazprombank, Credit Bank of Moscow, Rosselkhozbank, FC Bank Otkritie, Promsvyazbank, Sovcombank, Transkapitalbank, or any other comparable Russian financial institution as determined by the President, **and entities owned or controlled** by them;
- (iii) “Secondary” sanctions on foreign financial institutions for knowingly engaging in a significant financial transaction with sanctions Russian financial institutions



Sanctions on extraction industries

President to identify and sanction sectors and industries that should be sanctioned in the interest of U.S. national security (including oil and gas, metals extraction and production, minerals extraction and processing, or others)



Mandatory Sanctions on Individuals

Vladimir Putin's inner circle and oligarchs **before** Russia invades Ukraine.



Nord Stream 2 project

Immediately stops construction of the Nord Stream 2, mandates sanctions should Russia invade. Prior to an invasion, the bill suspends sanctions for as long as the German government continues to suspend the certification process

Status: Counterproposal to DUSA – to be discussed

Revisions of Export Administration Regulations (EAR)

Interim final rule (IFR) by Bureau of Industry and Security (BIS)

Restrictions on the export of Cybersecurity Items affecting Russia

Scarce license exceptions under the EAR

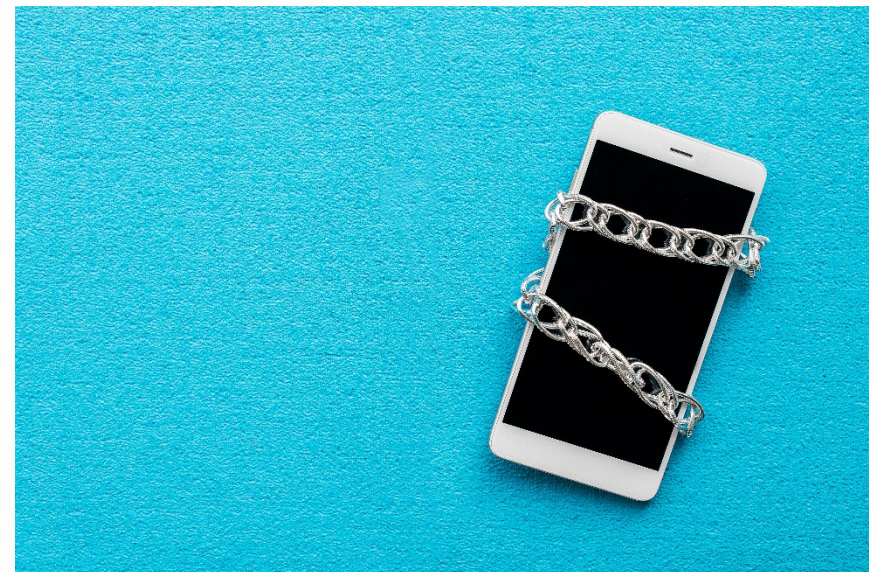


Potential ban on sale of high-technology products to Russia

If Russia is transferred to the category of countries supporting terrorism - embargo

The ban may affect only specific Russian companies / industries

Extraterritorial effect – may apply to product with US components around the world



Executive Order 14024
"Blocking Property
with Respect to
Specified Harmful
Foreign Activities of
the Government of the
Russian Federation"

Executive Order
14039 "Blocking
Property with
Respect to Certain
Russian Energy
Export Pipelines"

Directive 4, as
amended by
Countering America's
Adversaries Through
Sanctions
Act (CAATSA)

Russian Harmful
Foreign Activities,
Non-proliferation,
Cyber-related,
PEESA, and
Counter Terrorism
designations etc.



Enforcement Actions



OFAC designated
several companies
operating in the
technology sector of the
Russian economy that
OFAC determined
support the Russian
Intelligence Services
+ Crimea-related
persons designated

April 15, 2021



Authorizes the
Secretaries of the
Treasury and State to
further implement
sanctions under the
Protecting Europe's
Energy Security Act of
2019 ("PEESA")
Several entities, persons
and vessels designated

August 20, 2021



*Cameron International
Corporation*
OFAC's first of a kind
public enforcement
action on violation of this
Directive.
Settlement with OFAC
for \$1,423,766 for
supply of goods/services
to Gazprom-Neft Shelf

September 27, 2021



Trends:

- ✓ **Growing number of actions and diversity of sanctions**
- ✓ **Increasing scrutiny**
- ✓ **More varied enforcement approaches**

Potential Sanctions – Anticipation or Reaction



Refreshing Compliance Rules and Procedures

- ❑ **Helps** reduce sanctions risks, even lift penalties or sanctions, if they apply (e.g., *Settlement Agreement between OFAC and Richemont North America, Inc. d.b.a. Cartier*);
- ❑ **May consist in** updating policies and procedures with a reliable toolkit on a regular basis:
 - Rigorous screening process
 - Transaction closing guidelines (from start to closing; contractual clauses)
 - Monitoring compliance with policies and procedures within the company
 - Testing, audits and training



Delisting from the SDN list

31 CFR 501.807 - Procedures on delisting from the SDN List:

- Proving insufficiency of grounds for designation
- Offering remedies (e.g., sale of shares)

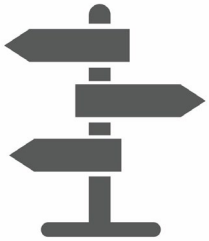


Obtaining Licenses

Special licenses - 31 CFR 501.801(b)

- Deal needs to be outlined
- Parties to it are to be identified
- Reports on the deal to be provided





Sanctions-related bills - crossroads

Initiatives expressed in current bills (whether DUSA, NYET Act or other) need to be followed closely



Measures affecting tech sector

are likely to tighten and grow, especially in cybersecurity, high-tech exports and crypto



Enforcement actions

are growing in number, diversity and complexity. Scrutiny is likely to increase.



Refreshing compliance mechanisms and considering options in advance- better safe than sorry



Natalia Abtseshko

Head of International Projects Group
VEGAS LEX

abtseshko@vegaslex.ru

+7 (495) 933 08 00

VEGAS
LEX

Sanctions-Related Amendments in Russian Commercial Procedure

Anastasia Cheredova, Head of Special Projects Group

MORE THAN MERE LEGAL SERVICES

VEGAS
LEX



- **2017** – The US imposed sanctions on Mr. Andrey Lugovoy, member of the Russian State Duma
- **July 2019** – Mr. Lugovoy and others filed a draft bill with the State Duma
- **June 2020** – Russia adopted amendments to the Commercial Procedure Code:
 - ▶ Commercial courts were granted **exclusive jurisdiction** to hear certain cases related to “anti-Russian” sanctions*
 - ▶ Legal entities and individuals may apply for **anti-suit injunctions** forbidding to initiate or continue disputes outside Russia

NB! No distinction between different types of sanctions

(i.e. personal, sectoral, territorial, secondary)



Russian commercial courts have **exclusive jurisdiction** to hear disputes

- ▶ that involve (i) a sanctioned Russian individual/entity or (ii) a foreign entity subjected to anti-Russian sanctions, and
- ▶ with subject matter related to sanctions (*inter alia*, between foreign entities subjected to restrictions because of anti-Russian sanctions)
- ▶ where a contractual dispute resolution clause is unenforceable due to sanctions, and that creates access barriers to justice



Claim to be filed with the commercial court at the place of the claimant's location / residence, provided that **no similar disputes** abroad exist

- ▶ Q1. Which commercial court will be competent to consider the claim brought by a foreign legal entity?
- ▶ Q2. Whether disputes involving individuals fall within the commercial courts competence, or not?



Foreign court decisions and arbitral awards are **enforceable** in Russia, if

- ▶ they were granted under the claim of the sanctioned person*
- ▶ the sanctioned person* raised no objections against foreign court or arbitral proceedings, as well as failed to request for anti-suit injunctions

Application for anti-suit injunctions may be filed, if

- ▶ there are pending foreign court or arbitral proceedings abroad
- ▶ there is evidence that such proceedings to be commenced (for example, the claim letter has been received)



Russian commercial court may award a compensation to the claimant in the event the opposing party breaches the anti-suit injunctions

- ▶ compensation may not exceed a sum of money claimed in foreign court or arbitral proceedings + court expenses

Before

&

After

✘ A56-30789/2002

DRITOR v. Northern Timber Trading
Company

*Provisional measures forbidding to continue
arbitration*

✘ A40-26424/2011

NLMK v. Mr. Nikolay Maksimov

*Extra-territorial provisional measures
forbidding to enforce an arbitral award*

✘ A03-547/2016

Planeta detstva BR v. Sberbank

*Provisional measures forbidding the arbitral
tribunal to consider the disputes*

✔ A60-36897/2020

Uraltransmash v. PESA Bydgoszcz
Application for anti-suit injunctions

✔ A56-57238/2020

Silovye Mashyni v. DTEK Vostokenergo
*Recovery of a contractual debt for works
(exclusive jurisdiction)*

✔ A40-156736/2020

Sovfracht v. Prosperity Estate Ltd
Application for anti-suit injunctions

⌚ A40-201344/2020

Sovfracht v. Foreign individuals
*Recovery of damages related to immovable
property (exclusive jurisdiction)*



24.11.2020

Commercial Court of Sverdlovsk Region

Application for anti-suit injunctions declined, as there was no proof that the Claimant had access barriers to justice in the Stockholm Arbitration



10.03.2021

Commercial Court of Ural Circuit

The position of the Commercial Court of Sverdlovsk Region was supported. It was highlighted that the Claimant in fact participated in arbitration



12.05.2021

Stockholm Arbitration

The tribunal rendered the final award



09.12.2021

Russian Supreme Court

The Supreme Court also declined the application, as the arbitration tribunal rendered the final award. However, the conclusions of lower courts were re-written

Key Findings

of the Russian Supreme Court

1. There is no need for the sanctioned person / entity to prove barriers to justice. Sanctions themselves are a sufficient ground to conclude that these barriers exist
2. Sanctions are personal and affect the rights of the company by default (at least, reputation). Parties to the dispute are not equal
3. There are reasonable concerns that the dispute will be fairly resolved on the territory of the country that imposed sanctions
4. Participation of the sanctioned person in the arbitration process does not matter

1 A mere fact of imposing sanctions is enough to cause the exclusive jurisdiction and anti-suit injunctions

2 Sanctions "ricochet" foreign business and transfer claims to Russia, regardless dispute resolution clauses

3 As of today, new protection mechanisms are not widespread. There is a possibility for growth of a number of cases

4 Foreign companies advised to speed up the disputes in foreign jurisdictions to avoid application of anti-sanctions rules

5 Many questions remain unanswered. Clarifications from the Russian Supreme Court are desired

To be continued...?



The Russian State Duma is considering a draft law extending the **exclusive jurisdiction to damage claims** against persons who:
(i) triggered the sanctions, (ii) unreasonably benefited from sanctions, (iii) terminated business relationships with the sanctioned persons, etc.



Anastasia Cheredova

Head of Special Projects group
VEGAS LEX

cheredova@vegaslex.ru

+7 (495) 933 08 00

VEGAS
LEX