



VAN BAEL & BELLIS

EU Sanctions against Russia

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EU Sanctions | Overview

- Adoption of EU sanctions:
 - Council adopts thematic and geographical sanctions regimes (EU autonomous sanctions or implementing UN sanctions regimes)
 - Implementation: Council Regulation (Art. 215 TFEU)
 - Enforcement/administration: EU Member State authorities
- Types of sanctions



Targeted
sanctions

Trade
sanctions

Financial
sanctions

EU Sanctions | Design

- Intentionally broad scope
 - “interruption or reduction, in part or completely, of economic and financial relations with one or more third countries” (Art. 215 TFEU)
 - Example: prohibitions apply to specific acts and related services facilitating those acts (e.g., financial and technical assistance for imports of certain goods)
- No general transition period
 - Winding-down clauses enable execution of contracts concluded before specific sanction + “ancillary contracts”, until a specified cut-off date
- Limited and sanction-specific exceptions
 - Carve-outs exempt certain acts from the scope of a prohibition (no need for a license)
 - Derogations enable certain acts which are prohibited, if:
 - justified for specific reasons (e.g., humanitarian purposes); and
 - *Ad hoc* authorisation is obtained from EU Member State competent authorities (limited insight into practice of various MS)

EU Sanctions | Geographical overview

- [EU sanctions map](#): comprehensive details of all EU sanctions regimes

The screenshot displays the 'EU Sanctions Map' interface. At the top, the title 'EU Sanctions Map' is accompanied by a book icon and the text 'Last update 02.09.2022'. Below the title, there are six navigation options, each with an icon: 'EU Sanctions Whistleblower Tool' (hand with speech bubble), 'Competent authorities' (classical building), 'TARIC database' (scales), 'Consolidated List of Travel Bans' (hand with speech bubble), and 'Consolidated List of Financial Sanctions' (snowflake). A 'THEMATIC RESTRICTIONS' dropdown menu is visible above the map. The map itself shows a world map with several countries highlighted in blue, including Russia, North Korea, and various countries in Africa and South America. Other countries are shown in a light grey color.

Who is subject to EU sanctions?



EU sanctions | Who must comply?

General rule – EU sanctions apply

- within the EU territory (EU Member States, including their airspace)
- to nationals of EU Member States
- to entities incorporated or constituted under EU Member State law
- to entities in respect of business done in whole or in part within the EU
- aboard any aircraft or vessel under EU Member State jurisdiction

Extraterritorial reach of EU sanctions?

EU nationals and companies must comply with EU sanctions outside the EU (incl, foreign branches of EU entities/dual nationals)

Foreign companies must comply with EU sanctions with respect to activities that have a clear link with the EU territory

Persons and entities outside EU jurisdiction – risk of circumvention (for EU based entities and persons participating in the scheme)

A close-up, low-angle photograph of a gold bar. The bar is oriented diagonally from the top-left to the bottom-right. The surface is highly reflective, showing bright highlights and deep shadows. Several embossed markings are visible, including a small 'X' and a larger, stylized '1000' or similar number. The background is blurred, emphasizing the texture and metallic sheen of the gold.

EU sanctions against Russia

Targeted sanctions and
restrictions on transactions with
Russian SOEs

EU sanctions against Russia | Targeted sanctions

Targets legal and natural persons who undermine or threaten the territorial integrity, sovereignty and independence of Ukraine, or support or benefit from such actions

→ legal and natural persons, entities or bodies listed in the [EU sanctions list](#)

Freezing of funds and economic resources

belonging to, owned, held or controlled by listed persons/entities

Travel ban

on listed individuals

Prohibition to make funds and economic resources available

to listed persons/entities

Indirectly making available funds or economic resources:

- Non-listed entity is **owned** by more than 50% by listed persons/entities (aggregation possible)
- Non-listed entity is **controlled** by a listed person/entity: factual assessment of decisive influence

EU sanctions against Russia | Targeted sanctions

Derogations

- Humanitarian purposes in Ukraine
- Basic needs
- Legal fees
- Routine maintenance
- Extraordinary expenses
- Diplomatic mission accounts
- Judicial/Adm decisions
- Pre-existing claims against a listed person
- Divestment

→ upon **authorisation** by an EU Member State

Carve-outs

- Interest payment
- Payment for pre-existing claims
- Payment due under judicial/ddm decision

If payment is also frozen

- Payments made by the European Union's humanitarian partners for humanitarian purposes in Ukraine

→ no **authorisation** by EU Member State required

EU sanctions against Russia | Dealings with listed Russian banks

- Loan and interest payments, payments under security instruments in favour of listed banks are prohibited
- Funds transferred through listed banks (even if the sender and the recipient are non-listed entities) should be frozen assets
- Payment of fees to listed banks for the issuance of banking guarantees or promissory notes is prohibited
- Funds received by means of payment on the basis of a guarantee or promissory note by a listed bank should be frozen assets

Listed Russian banks include

- **Russian National Commercial Bank**
- **Bank Rossiya**
- **Promsvyazbank**
- **VEB R.F.**
- **Bank Otkritie**
- **Novikombank**
- **Sovcombank**
- **VTB Bank**
- **Sberbank**
- **National Settlement Depository**

Derogations

Termination of operations, contracts or other agreements (e.g., closing bank accounts, repayment of loans, release of securities)

Bank Rossiya
Promsvyazbank
VEB R.F.

Termination by **24 August 2022** of contracts concluded before **23 February 2022 (expired)**

Bank Otkritie
Novikombank
Sovcombank
VTB Bank

Termination by **9 October 2022** of contracts concluded before **8 April 2022**

Sberbank

Termination by **22 August 2023** of contracts concluded before **21 July 2022**

Ongoing sale of proprietary rights in EU entities

Sberbank

Completion by **31 October 2022** of any ongoing sale/transfer of proprietary rights owned, directly or indirectly, by Sberbank in an entity established in the Union

→ upon **authorisation** by EU Member State

EU sanctions against Russia | Dealings with Russian SOEs

Prohibited to directly or indirectly engage in transaction with
 (a) certain Russian SOEs listed in separate Annex and
 (b) entities outside the EU owned or controlled by a listed Russian SOE

Carve-outs for transactions

- (strictly necessary) for the purchase, import or transport from or through Russia of
 - natural gas, titanium, aluminium, copper, nickel, palladium, and iron ore into the Union, the EEA, Switzerland, or the Western Balkans
 - oil, including refined petroleum products
 - coal and other solid fuels until 10 August 2022 into the EU (expired)
 - pharmaceutical, medical, agri and food products
- related to energy projects outside Russia in which a listed Russian SOE is a minority shareholder
- related to the provision of electronic communication services, data center services etc. to a listed Russian SoE
- strictly necessary for the wind-down, by 31 December 2022, of a joint venture or similar arrangement concluded before 16 March 2022 involving a listed Russian SoE
- strictly necessary for access to judicial/admin/arbitral proceedings etc.

List of Russian SOEs

- **OPK Oboronprom**
- **United Aircraft Corporation**
- **Uralvagonzavod**
- **Rosneft**
- **Transneft**
- **Gazprom Neft**
- **Almaz-antey**
- **Kamaz**
- **Rostec**
- **JSC Sevmash**
- **Sovcomflot**
- **United Shipbuilding Corporation**

EU sanctions against Russia

Financial sanctions



EU sanctions against Russia | Financial sanctions (1)

SWIFT Ban

Exclusion from SWIFT financial messaging system

- **Bank Otkritie**
- **Novikombank**
- **Promsvyazbank**
- **Bank Rossiya**
- **Sovcombank**
- **VEB R.F.**
- **VTB Bank**
- **Sberbank**
- **Credit Bank of Moscow**
- **Joint Stock Company Russian Agricultural Bank**

Corporate finance

Restrictions on dealing in corporate debt and securities incl crypto-assets

Sovereign debt

Restrictions on dealings in Russian sovereign debt, reserves and assets

Public finance

Exclusion from EU, MS, and Euratom finance programmes and prohibition on public trade and investment support

Procurement

Exclusion from EU public procurement and continuation of existing public contracts

EU sanctions against Russia | Financial sanctions (2)

Investments and financing in the Russian energy sector

Restrictions on acquiring/extending participations in, providing financing to and creating joint ventures with entities in the **Russian energy sector**

Investments

Restrictions on investing in or otherwise contributing to projects co-financed by the **Russian Direct Investment Fund (RDIF)**

Financial and business services

Restrictions on the acceptance of **deposits** and holding crypto-assets from Russian entities, nationals and residents; **credit rating** services and services by Central Security Depositories (CSDs); services related to **trusts**; accounting, audit, consulting and related **business services; investment related services** to entities in the Russian energy sector, and exports of **banknotes**

EU sanctions against Russia

Trade sanctions



EU sanctions against Russia | Export restrictions

Export restrictions generally apply to the sale, supply, transfer or export of restricted items to Russia, or for use in Russia, irrespective of the origin of the items, and related financial and technical services

Dual-use goods, software and technology

dual-use items listed in Annex I to (amended) Reg 821/2021 (Dual-Use Regulation)

Advanced goods, software and technology

electronics, advanced materials, computers, sensors, avionics, vessels, etc

Maritime navigation goods

Luxury products

Oil exploration goods

Oil and gas production goods

Key industrial inputs

incl. chemicals, wood, fabrics, building materials, glass, steel, power tools, machinery

Aerospace goods and jet fuel

The sale, supply or transfer of restricted items already imported or located in Russia is also prohibited → e.g., where the items are held in inventory of an EU company in Russia (e.g., a branch of the EU company in Russia)

EU sanctions against Russia | Import restrictions

Import restrictions generally apply to the import, purchase and transport of certain products originating or exported from Russia, as well as related financial and technical services

Iron and Steel products

categories of steel products also covered by the EU steel safeguard measures

Key industrial outputs (!)

products including cement, wood, tyres, certain machinery, caviar, vodka, fertilizers

Coal and solid fossil fuels

Crude oil and petroleum products

Gold

Gold in various forms, waste and scrap of gold, gold coins, processed gold, gold jewelry

The import, purchase and transport of restricted items, apart from crude oil and petroleum products, is prohibited also when the country of destination is not the European Union → e.g., the items originating in and/or exported from Russia are purchased or imported from an EU entity (e.g., a branch of an EU company) located in a third country

EU sanctions against Russia | Services restrictions

Services related to items subject to the EU trade sanctions (item-specific)

The provision of services to any person or entity in Russia or for use in Russia is prohibited when the services relate to obtaining, manufacturing, repairing, maintaining and/or using products subject to EU trade sanctions and they constitute:

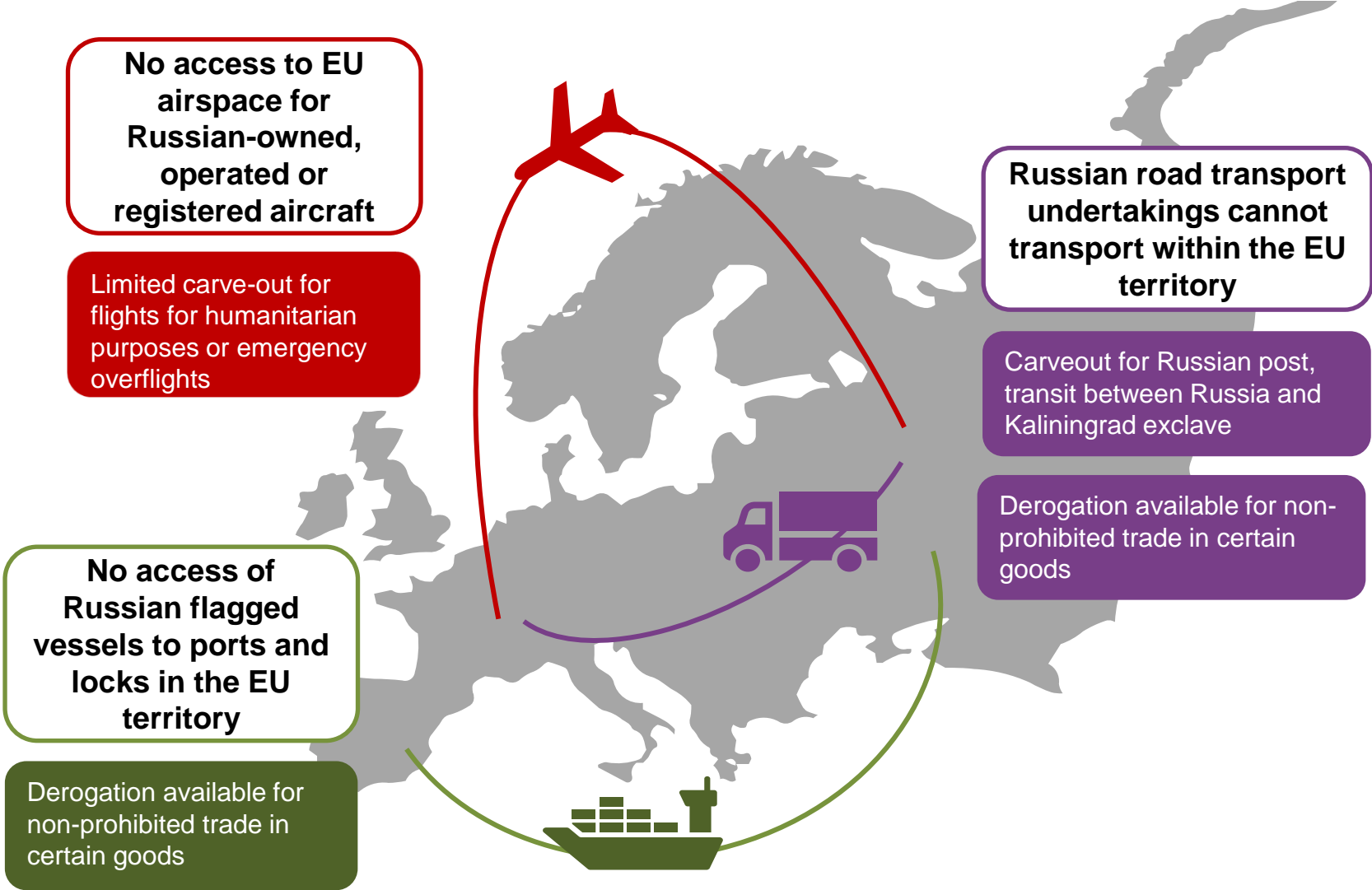
- Technical assistance
- Brokering services
- Financing and financial assistance
- Other services (broadly defined)

Business Services (horizontal prohibition)

The provision of business services to any person or entity in Russia (regardless of the connection with sanctioned products) is prohibited. Business services cover:

- Accounting, auditing, including statutory audit, bookkeeping or tax consulting services
- Business and management consulting services
- Public relations services

EU sanctions against Russia | Transport restrictions

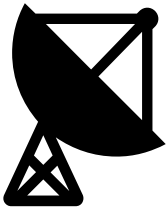


EU sanctions against Russia | Other restrictions



Non-government controlled areas of Donetsk and Luhansk (and Crimea)

- Import and export bans
- Restrictions on trade and investment
- Services prohibitions



Suspension of the broadcasting activities of **Sputnik, Russia Today, Rossiya RTR, Rossiya 24, TV Centre International**

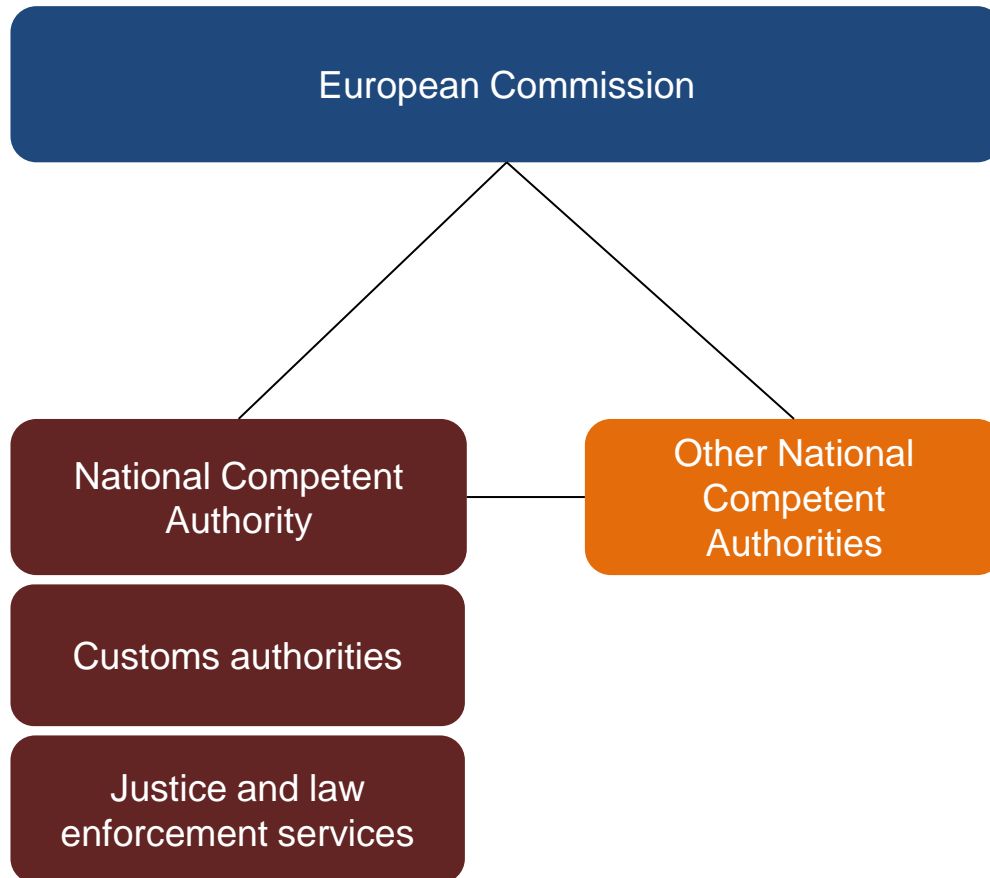


Suspension of the facilitated access to **EU short-stay visas**



**Ensuring compliance with
EU sanctions – enforcement**

EU sanctions | Enforcement



European Commission

- Ensures the uniform application of sanctions
- Issues opinions to the competent authorities in Member States
- Monitors credible allegations of breaches

Member States

- Define and apply penalties
- Grant exemptions and authorisations
- Gather information and coordinate with the Commission

EU sanctions | Enforcement – confiscation/list of EU crimes

The European Commission considers that “[i]n the absence of Union-level harmonisation, national systems differ significantly as far as criminalisation of the violation of Council Regulations on Union restrictive measures is concerned. Equally, criminal penalty systems differ substantially”

[European Commission Proposal for a Directive on asset recovery and confiscation](#)

Procedures on identifying and tracing property owned or controlled by persons or entities subject to targeted EU sanctions

Confiscation limited to situations where property stems from criminal activities, including the violation of EU sanctions, following a final conviction

[European Commission Proposal for a Council decision on adding the violation of EU sanctions to the list of EU crimes](#)

Violation of EU sanctions as a “particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis”

Union-level minimum rules concerning the definition and penalties for any violation, including circumvention

EU sanctions | Enforcement - authorisations by Member States

Transparency

Lack of publicly available information on the authorisation procedures before the MS authorities, authorisations granted etc.

Comfort letters

Unwillingness of MS authorities to issue comfort letters or other forms of written assurances to EU operators confirming that their conduct does not infringe the EU sanctions (but different practices are visible)

Coordination

Lack of formal channels of coordination between the MS authorities – transactions with touchpoints in multiple EU jurisdictions

Principle of sincere cooperation: competent national authorities are under a duty of good faith cooperation (recognise each other's authorisation decisions; proactively reach out to each other etc.)

General (block) authorisations

The Commission has confirmed that MS authorities are entitled to provide block authorisations covering multiple types of conduct performed by the same or different EU operators

EU sanctions | Enforcement - judicial developments

EU level

- Challenges against the listing of persons and entities in the EU sanctions list (ongoing cases T-238/2022; T-234/22; T-237/22; T-193/22 – applications for interim relief dismissed)
- T-125/22, *RT France* – broadcasting ban confirmed by the EU General Court
- Future: more direct actions + many requests for a preliminary ruling from the CJEU

EU Member States level

- More cases are expected to be filed with the EU Member States courts as the implementation of the EU sanctions continues (see, *Rechtbank Amsterdam v. Boskalis*, C/13/717154 / KG ZA 22-388, Court of Amsterdam)



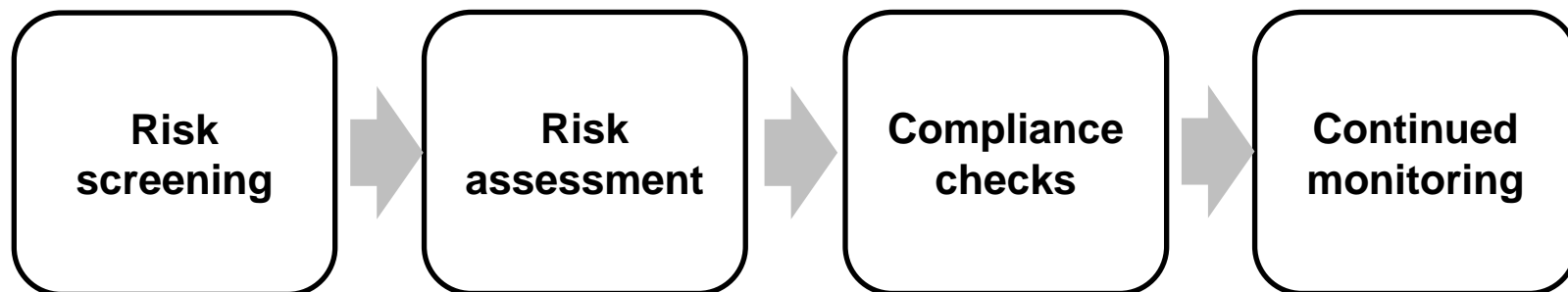
**Ensuring compliance with
EU sanctions – due diligence**

EU sanctions | Due diligence (1)

Legal basis: EU operators are not liable when violating EU sanctions if they did not know, and had *no reasonable cause to suspect*, that their actions would infringe the measures → implied due diligence obligation

Commission suggests four-step approach to identify and mitigate compliance risks, “calibrated according to the specificities of their business and the related risk exposure” (EU sanctions compliance programme)

Due diligence process



EU sanctions | Due diligence (2)

EU natural persons

Sanctions risks primarily arise when EU nationals are involved in or must approve **commercial transactions** and **payments** involving persons and entities in, and goods and services supplied to, from or within, jurisdictions in respect of which the EU applies sanctions

EU legal persons, entities or bodies

Sanctions risks primarily arise when EU companies are involved in or direct or must approve **commercial transactions** and **payments** involving persons and entities in, and goods and services supplied to, from or within, jurisdictions in respect of which the EU applies sanctions

Non-EU legal persons, entities or bodies

Sanctions risks arise when non-EU companies engage in business having a link with the EU, e.g., conduct that (i) relates to the performance of an obligation within the EU territory; (ii) entails the making of a payment through a bank established in the EU; or (iii) is performed through a subsidiary established in the EU. Example: if non-EU companies fund **commercial transactions** and/or **payments** by using an EU entity, approve or direct commercial transactions and/or payments entailing the discharge of obligations within the EU territory; or approve or direct the supply of goods and services to, from or within the EU territory sanctions risks arise

EU sanctions | Due diligence (3)

Step 1: Risk screening

Collect standard information (e.g., using questionnaire) about:

1. Product or service at issue
2. Parties involved in transaction (“KYC”)
3. Destination of the goods
4. Payment channels

Determine relevant risks or “touchpoints” for your business

Listed
persons
involved in
transaction

Sanctioned
banks
involved in
transaction

Sanctions
apply to
country of
destination

Possibility
to
circumvent
sanctions

Mode of
transport
affected by
sanctions

Conduct standard (“Level 1”) checks

- Sanctions list screening (special tools available)
- EU sanctions map

EU sanctions against Russia | Due Diligence (4)

Step 1: Risk screening

Step 2: Risk assessment

Based on the information and the Level 1 checks you have carried out, identify any red flags and assign a low / medium / high risk value to the transaction

Low risk

Medium risk

High risk

Step 3: Compliance checks (“Level 2 check”)

Proceed only with independently verifiable information ruling out the compliance risk you have identified, proportionate to level of risk.

Step 4: Proceed with transaction and continue monitoring



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