



## **New Sanctions Targeting the Russian Economy and the Removal of Russian Banks from SWIFT**

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### **Introduction**

The development of the Russia-Ukraine crisis has brought a wide range of sanctions targeting high-level Russian individuals, companies, and the Russian economy in general. Not speaking to the political validity of these sanctions, they will pose significant barriers for and impact European market actors, especially those with investments, end customers or supply changes involving the Russian market.

### **New Sanctions**

23 February 2022, following Moscow's statement of the legitimate sovereignty of Donetsk and Luhansk, the European Union included multiple new Russian individuals under the sanctions imposed following Moscow's annexation of Crimea in 2014, after which the EU imposed sanctions on select Russian individuals, including a travel ban to the European

Union and freezing their assets in the European Union. The new individuals counted among others the members of the Russian Duma and high-ranking officials.

25 February 2022, the Council of the European Union adopted a host of new sanctions targeting the Russian economy more directly, and lately, the European Commission, France, Germany, Italy, The United Kingdom, Canada, and the United States announced in a joint statement on 26 February 2022 further economic measures, among others the removal of selected Russian banks from the SWIFT messaging system.

As a member of the European Union, Denmark and entities located in Denmark shall adhere to the sanctions imposed by the European Union. Further, Denmark has imposed flying restrictions on Russian aircrafts in the respective states' airspace alongside multiple allies. Denmark has also backed the measures taken by multiple sporting associations of excluding or limiting the participation of Russian athletes and sports teams.

#### **Export Restrictions Adopted by the European Union<sup>1</sup>**

- A ban on the export of dual-use goods and technology has been imposed, making it illegal to export such products or technologies directly or indirectly to Russia. Dual-use products or technologies are generally products or technologies that can serve a military purpose while also having clear civilian use purposes.
- A ban on direct or indirect export to Russia of goods and technologies that might contribute to Russia's technological enhancement of its defence and security sector. This restriction includes the export of semiconductors and related equipment.
- A ban on the export of goods and technologies for use in oil refining has been imposed.
- The restrictions also ban the export of goods and technology suited for use in aviation and the space industry, together with the prohibition of insurance, reinsurance, and maintenance in relation to those goods and technologies.
- Services and technical assistance related to the above is also prohibited by the new sanctions.

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<sup>1</sup> COUNCIL REGULATION (EU) 2022/328 of 25 February 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine.

- Further, all European companies are banned from doing business and exporting technology to a range of Russian companies engaged in the arms, military communication, shipyard, and pharmaceutical markets.

### **Financial Restrictions Adopted by the European Union<sup>2</sup>**

- The new restrictions limit Russian entities' access to the European capital markets, including strong restrictions on interactions with the Russian Central Bank and other top banks of Russia. Further, sanctions against the Russian Central Bank have been bespoken.
- The restrictions prohibit the listing and provision of services in relation to shares of Russian state-owned entities on the European Union trading venues.
- In addition, the sanctions introduce new measures which significantly limit the financial inflows from Russia to the European Union by prohibiting the acceptance of deposits exceeding EUR 100,000 per credit institution from Russian nationals or residents, the holding of accounts of Russian clients by the European Union central securities depositories, as well as the selling of euro-denominated securities to Russian clients.

### **Removal of Russian Banks from SWIFT<sup>3</sup>**

- Alongside its allies, the European Commission has announced the removal of selected Russian banks from SWIFT. The removal will make it extremely cumbersome for entities outside of Russia to make/receive digital payments to and from entities located in Russia relying on affected banks, which will severely hamper any imports and exports from the country, not just with the European Union and its allies but with a large part of the global economy, regardless of that market sector being hit by direct sanctions.

### **Flight Bans**

- Alongside the other members of the European Union, Canada and recently the USA, Denmark has closed its airspace to Russian aircrafts, a move which is not insignificant as Denmark controls the Greenlandic airspace, which is a common route for transatlantic flights.

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<sup>2</sup> See note above.

<sup>3</sup> Joint Statement on further restrictive economic measures - [https://ec.europa.eu/commission/presscorner/detail/en/statement\\_22\\_1423](https://ec.europa.eu/commission/presscorner/detail/en/statement_22_1423) - visited 2 March 2022.

In response, Moscow has decided to close the Russian airspace for the above states, which will have a significant impact on world air travel, as most direct routes between Asia and the European Union alongside North America pass through Russian controlled airspace. The move by Moscow has already seen aviation actors diverge and suspend routes. For example, recently SAS announced it would suspend its Copenhagen-Tokyo route<sup>4</sup>. The sanctions above strengthen the sanctions that were already implemented before Moscow began its invasion of Ukraine on 24 February 2022, including trade restrictions with Donetsk and Luhansk, restricted access to European financial markets, sanctions targeting specific natural and legal persons, a ban on exports of military hardware alongside services hereto, some restrictions on dual-use exports and export restrictions on goods and technologies for offshore oiling.

### **How to move forward?**

We have yet to see a general trade embargo with Russia; however, the current sanctions will undoubtedly have effect on the viability of trade with Russia in all market and financial sectors, but will not, however, make trade impossible.

Entities with interest in the Russian market should create a clear overview of all trade with Russian entities, the trade goods, the involved banks, owners, and directors. That information should be held against any current sanctions to ensure compliance. Further, a common-sense analysis should be made to identify if any business activities might be affected by the potential of further sanctions.

The Russian Rubel has seen its greatest devaluation in recent years, decreasing its value around 20% toward the Euro, foreshadowing a great blow to the Russian economy, something which entities engaged in Russia should take into account. The collapse and/or multiple bankruptcies in the banking sector should be considered as likely, as we have already seen with the European subsidiaries of Sberbank being deemed “failing or likely to fail” by the European Central Bank.<sup>5</sup>

Particular focus should be given to how trade can be carried out post removal of Russian banks from SWIFT. Payments could be made with pre-SWIFT means such as telefax or email, despite the security and effectiveness of such payments being questionable. Trade with Russian oil and gas still seems to go unaffected by European Union’s sanctions, meaning that entities could potentially begin using oil and gas as a medium for reimbursement for their trade with Russia, with the added benefit of trading with a more stable medium than currency exchanges involving the Rubel.

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<sup>4</sup> <https://www.berlingske.dk/business/flyveforbud-faar-sas-til-at-suspendere-tokyo-rute> - visited 2 March 2022.

<sup>5</sup> <https://www.bankingsupervision.europa.eu/press/pr/date/2022/html/ssm.pr220228~3121b6aec1.da.html> - visited 2 March 2022.

Any entity that has a relationship with Russian actors should consider alternatives as the sanctions have been implemented without any date of expiry. It is expected that the crisis might be long-standing, and consequently, the sanctions will most likely remain. Further, the risk of damages to brand and image should be duly taken into consideration as a continued relationship with any Russian actors could invoke strong reactions from end-consumers.

### **Force Majeure?**

A question that many market actors might have is whether a contractual relationship can be terminated or suspended on the basis of Force Majeure (or Frustration if governed by a Common Law regime). The answer to that question will depend on the specific jurisdiction and/or the wording of the relevant Force Majeure clause. From a general and common understanding of Force Majeure, the sanctions imposed by the West will most likely be considered as being events outside of the parties' control as well as severely disruptive to the performance of the contract, and thus likely to be considered to be Force Majeure events.

However, where such contracts are not directly affected by the sanctions but are terminated for other reasons, such as public perception or reputation, a Force Majeure situation is more uncertain. For example, terminating a sponsorship agreement with a Russian company would most likely not be founded in Force Majeure, seeing as the objective impossibility of continuing the agreement is dubious.

Finally, the unforeseeability of the sanctions can be questioned, especially in contracts where sanctions do not directly affect the contract but rather the supply chain of either party and thereby affecting that party's ability to fulfil the contract. In that case, it could be argued that since the first sanctions in 2014, the possibility of further sanctions could have been foreseen and supply chains could have been diversified.

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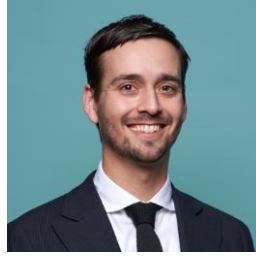
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