



## **4th Package of Sanctions and Russia wavering IPR protection**

**18 March 2022**

### **Introduction**

The European Commission has announced a 4th package of sanctions targeting the Russian military and Russia's access to luxury goods, alongside further isolation of Russia's economic and financial sectors. The sanctions have been coordinated with the USA. Meanwhile, Russia has announced that certain intellectual property rights linked to 'unfriendly countries' will no longer be offered protection.

## **The 4th Package of European Sanctions targeting Russia<sup>1</sup>**

The 4th sanction package includes the following:

- A full prohibition of any transaction with certain Russian state-owned enterprises has been announced. The affected enterprises have been characterised as the “Kremlin’s military-industrial complex”<sup>2</sup>.
- An import ban on steel products from Russia.<sup>3</sup>
- A ban on investment and participation in/with Russian or third-country entities operating in the Russian energy sector, with limited exceptions regarding civil nuclear energy and transport of energy products to the EU.
- An export ban on luxury goods, such as jewellery and luxury cars to Russia.
- A prohibition on the rating of Russia and Russian companies by EU credit rating agencies alongside prohibition on the provision of rating services to Russian clients.

### **Russia’s most favoured Nation Status is being revoked**

Furthermore, the Commission announced that, together with other members of the World Trade Organisation (WTO), Russian products and services will no longer be protected by the Most Favoured Nation principle under the WTO. The principle stipulates that as a general rule, members of the WTO shall be treated equally, and no preferential treatment, being positive or negative, can be enforced. Though the exact implications of denying Russia most favoured treatment are yet to be stipulated, the move will allow the European Union to implement and enforce harsh tariffs on Russian products and services alongside other trade barriers, making them uncompetitive on the European markets.

### **Russian Retaliation - No more IPR protection in Russia?**

In light of an ever-increasing lack of goods and technologies in the Russian market, due to the western sanctions fuelled by companies leaving the country, the Russian Government has on the 06. May 2022 adopted a decree, allowing authorities to grant local Russian individuals and market actors the right to utilize inventions, utility models, and industrial designs held by foreign third-parties without the consent of the owner of such intellectual property rights (IPR).

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<sup>1</sup> COUNCIL REGULATION (EU) 2022/428

<sup>2</sup> The affected companies are specified in Annex XIX

<sup>3</sup> The affected products are specified in Annex XVII

Though the IPR right still exist, the protection normally granted by an IPR will not be enforceable in Russia when an authorisation to utilize the IPR is granted.

Until now, the Russian system allowed authorities to grant local rights, if this was required in to protect citizens' lives and health and to support the state's defence and safety. However, the Civil Code required that the owner of the IPR would then be given a fair compensation.

According to this new decree the owner of the IPR shall be compensated with 0% of the revenue which the use of the IPR generates if the owner is associated with an unfriendly state. A list of unfriendly states has been provided in a government order and those states closely matches states which has enforced sanctions against Russia including all EU members and thus including Denmark.

This new decree will enable Russia to, without the owner's consent and without having to pay compensation, use inventions, utility models, and industrial designs, which would normally be protected. It seems clear that the decree is adapted to make it possible for Russian entities to produce devices and use technologies that are disappearing from the Russian market due to sanctions and companies pulling out of Russia. Though it technically still is a requirement that the authority to use the IPR must be required for health or security reasons, it is likely that this requirement is interpreted broadly and that the requirement will likely be seen as being fulfilled when the authorisation is granted to mitigate effects of the western sanctions.

### **How to stand on the Sanctions?**

For entities with business activities related to Russia and/or Belarus, it is important to monitor their business activities and perform investigations to ensure compliance with the sanctions that at any time are in force.

Even though IPR protection is de facto being lifted in Russia regarding certain IPR held by owners in 'unfriendly states', it is still unclear to what extent Russian actors can benefit. Know-How and technical specifications may still constitute an insurmountable barrier to actually utilize the IPR. Entities possibly affected by this new regime should therefore ensure that access to know-how and technical specifications are restricted, especially with regard to local Moscow and Russian entities.

Regarding the ban on steel imports from Russia, quotas on imports from other countries have been adjusted (under the EU safeguard measures), and entities reliant on steel imports should search for alternative suppliers in those countries. Further, entities should investigate the ultimate origins of the imported steel products (and other products with import bans from Russia and Belarus) to ensure that they do not have origins in Russia or Belarus.

**Need help navigating in the fast-changing Markets?**

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We have set-up teams that are ready to help any of our clients, navigating in these changed environments.

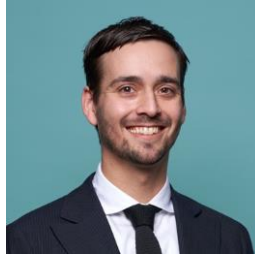
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