



The Ukrainian crisis, the international response and the sanctions scenario

📅 15/03/2022

📖 EU AND COMPETITION LAW, CONSTITUTIONAL AND INTERNATIONAL LAW, PERSPECTIVE

Roberto A. Jacchia
Marco Stillo

Between 23 and 24 February 2022, the Russian Federation launched a military attack on the main Ukrainian cities and airports, thus starting an invasion which opened an unprecedented crisis worldwide. Almost every country reacted first with disbelief and, therefore, by adopting a series of economic and political sanctions against Russia at either national or regional level.

The dispute revolves around the so-called "Donbass region", a territory historically controlled by pro-Russian separatist factions and which, since 2013, keeps generating never-ending tensions between Ukraine and Russia.

More particularly, in November 2013 thousands of Ukrainians gathered in the so-called "Euromaidan" movement in

order to protest against the country's then pro-Russian government, led by then-president *Yanukovych*. After months of tensions and clashes, on 22 February 2014 *Yanukovych* left the country and was replaced by pro-European president *Yatsenyuk*, an outcome particularly disliked by the Russian government which led, on the one hand, to the occupation and annexation of Crimea and, on the other hand, to the Luhansk and Donetsk *oblasts* exiting from the Ukrainian government's control. In order to put an end to the conflict, on the initiative of the "Normandy Quartet"¹ on 11 February 2015 the "Minsk II Accords" were signed which, amongst others, provided for an immediate bilateral ceasefire as well as a Ukrainian constitutional reform focused on granting a special status to the Luhansk and Donetsk *oblasts*. These agreements followed the first Russian-Ukrainian Minsk Agreements of 2014 which,

¹ That is Ukraine, Russia, France and Germany.



despite including, amongst other things, the exchange of prisoners, deliveries of humanitarian aid, the withdrawal of heavy weapons as well as greater autonomy for the Donbass regions, failed due to repeated violations by both sides.

After a long period of apparent quiet, the situation suddenly escalated when, on 17 February 2022, the leaders of the self-proclaimed separatist republics of Luhansk and Donetsk declared that they had been exposed to indiscriminate aggression by the Ukrainian army, thereby resuming military operations in response. Subsequently, the situation precipitated with the recognition by the Russian Federation of their independence on 21 February 2022, which for practical purposes put an end to the Minsk II Accords and opened the doors to what is now an undeclared, but very real state of war.

The European Union's response to Russia's military attack has been swift.

In the first place, amending Regulation (EU) No 269/2014² and Decision 2014/145/CFSP³, on 23 February 2022 the Council adopted a first package of measures grouped into 3 categories: restrictive measures (such as, amongst others, an asset freeze, a prohibition from making funds available and a travel ban from entering or transiting through EU territory) aimed at all the 351 members of the Russian State Duma who voted in favour of recognising the

independence of the self-proclaimed Donetsk and Luhansk republics and to 27 high profile individuals and entities⁴ who played a role in undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, ii) restrictions targeting trade from the non-government controlled areas of the Donetsk and Luhansk *oblasts* to and from the Union⁵, and iii) a sectoral prohibition to finance Russia, its government and Central Bank⁶.

Subsequently, in its 24 February 2022 Conclusions the Council agreed on further restrictive measures, which were implemented between the following 25 and 28 February.

More particularly, on 25 February 2022 the Council further expanded its financial restrictions, thereby limiting Russia's access to the most important capital markets. More particularly, the Council prohibited i) the listing and provision of services in relation to shares of Russia state-owned entities on Union trading venues, ii) accepting deposits from persons or entities established in Russia if higher than 100.000 EUR, iii) holding of accounts of Russian clients by Union central securities depositories, and iv) selling of euro-denominated securities to Russian clients⁷. In the second place, the Council forbade the sale, supply, transfer or export of goods and technology for use in the oil refining industry to persons or entities in Russia or for use in Russia. In the third place, the Council prohibited,

² Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, *OJ L 78 of 17.03.2014*.

³ Council Decision 2014/145/CFSP of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, *OJ L 78 of 17.03.2014*.

⁴ Such as i) members of the government, ii) banks and business persons/oligarchs supporting financially or materially Russian operations in the Donetsk and Luhansk territories or benefitting from them, iii) senior military officers involved in the invasion and destabilisation actions, and iv) individuals responsible for leading a disinformation war against Ukraine.

⁵ Such as i) an import ban on goods from the above-mentioned areas, ii) restrictions on trade and investments related to certain economic sectors, iii) a prohibition from supplying tourism services and iv) an export ban for certain goods and technologies in the transport, telecommunications, energy, prospecting, exploration and production of oil, gas and mineral resources sectors.

⁶ For any further information see our previous article, available at the following [LINK](#).

⁷ Council Decision (CFSP) 2022/327 of 25 February 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, *OJ L 48 of 25.02.2022*.

on the one hand, the sale, supply, transfer or export of dual-use goods and technology to any person or entity in Russia or for use in Russia if they are meant to be used for military purposes or for military users and, on the other hand, the sale of dual-use goods to specified legal entities in Russia and to provide technical assistance, related services and financial assistance⁸. In the fourth place, the Council introduced an export ban on goods and technology suited for use in the aviation and space industry as well as a prohibition to provide the related insurance, reinsurance and maintenance services⁹. In the fifth place, the Council banned diplomats, Russian officials and business people from benefitting from visa facilitation provisions, which had provided for easier access to the EU territory¹⁰. Finally, the Council decided to impose an asset freeze for President *Putin*, Minister of Foreign Affairs *Lavrov* and members of the Russian National Security Council.

On 28 February 2022, the Council decided to prohibit, on the one hand, to land in, take off from or overfly EU territory to any aircraft operated by Russian air carriers, any Russian registered aircraft and any non-Russian registered aircraft owned, chartered or otherwise controlled by a Russian legal or natural person¹¹ and, on the other hand, to transactions with the Russian Central Bank or any legal person, entity

or body acting on its behalf or under its direction.

Further measures were then implemented between 2 and 4 March 2022. In the first place, the EU decided to exclude key Russian banks¹² from the Society for Worldwide Interbank Financial Telecommunications (SWIFT) from 12 March 2022, thereby stopping them for practical purposes from conducting their financial transactions and payments worldwide in a fast and efficient manner. In the second place, the Commission suspended its cooperation with Russia and Belarus with regard to i) the European Neighbourhood Instrument cross-border cooperation programmes (ENI CBC)¹³, ii) the Interreg Baltic Sea region programme¹⁴, and iii) the Horizon Europe programme¹⁵. Finally, the EU suspended the broadcasting activities of *Russia Today* and *Sputnik*, which were deemed essential and instrumental in bringing forward information on and supporting Russia's aggression against Ukraine.

Following up on the restrictive measures adopted on 2 March, on 9 March 2022 the Council then agreed on several additional measures. On the one hand, the Council decided to impose restrictive measures on an additional 160 individuals related to the ongoing Russian military aggression against Ukraine and actions undermining or

⁸ 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, OJ L 49 of 25.02.2022.

⁹ Council Decision (CFSP) 2022/327 of 25 February 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, OJ L 48 of 25.02.2022.

¹⁰ Council Decision (EU) 2022/333 of 25 February 2022 on the partial suspension of the application of the Agreement between the European Community and the Russian Federation on the facilitation of the issuance of visas to the citizens of the European Union and the Russian Federation, OJ L 54, of 25.02.2022.

¹¹ Council Decision (CFSP) 2022/335 of 28 February 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, OJ L 57, 28.02.2022.

¹² Such as *Bank Otkritie*, *Novikombank*, *Promsvyazbank*, *Bank Rossiya*, *Sovcombank*, *VNESHECONOMBANK (VEB)* and *VTB BANK*.

¹³ Introduced by Regulation 232/2014, the ENI CBC is the main financial instrument of the EU's foreign policy towards its neighbours to the East and the South.

¹⁴ The Programme's purpose is to strengthen integrated territorial development and cooperation for a more innovative, better accessible and sustainable Baltic Sea Region.

¹⁵ Horizon Europe is the EU's key funding programme for research and innovation.

threatening its territorial integrity, sovereignty and independence. On the other hand, the Council introduced further restrictive measures with regard to the export of maritime navigation goods and radio communication technology to Russia, thereby prohibiting to sell, supply, transfer or export, directly or indirectly, such goods and technology to any natural or legal person, entity or body in Russia, for use in Russia, or for the placing on board of a Russian-flagged vessel¹⁶. Furthermore, the Council confirmed that loans and credit could be provided by any means, including crypto assets, as well as further clarified the notion of “transferable securities” so as to include them therein¹⁷.

Finally, on 10-11 March 2022 the Council gathered at an informal summit in Versailles and released a Declaration¹⁸ addressing three key drivers. In the first place, the Council agreed on investing more Union resources in defence capabilities and innovative technologies, thereby, amongst other things, i) increasing substantially defense expenditures, ii) developing further incentives to stimulate Member States’ collaborative investments in joint projects and joint procurement of defense capabilities, and iii) fostering synergies between the civilian, defence and space research and innovation sectors. In the second place, the Council agreed to phase out the EU’s dependency on Russian gas, oil and coal imports as soon as possible by accelerating the reduction of the overall reliance on fossil fuels, speeding up the development of renewables and the production of their key components and improving energy efficiency and the management of its

consumption. Finally, the Council agreed on making Europe’s economic base more resilient, competitive and fit for the green and digital transitions building on the strengths of the Single Market and on creating an environment that facilitates and attracts private investment.

Russia’s decision provoked harsh reactions all over the world, with a number of countries deciding to adopt restrictive measures similar to those of the European Union.

On 21 February 2022, US President Joe Biden signed Executive Order 14065¹⁹ banning, on the one hand, the exportation, sale, or supply from the US or by a US person of any goods, services, or technology to the Luhansk and Donetsk regions and, on the other hand, their investments or financing. Accordingly, from 22 February 2022 onwards the Treasury’s Office of Foreign Assets Control (OFAC) introduced several major economic restrictions. In the first place, OFAC imposed payable-through account sanctions on Public Joint Stock Company Sberbank of Russia (“Sberbank”), which holds about a third of all bank assets in Russia, and directed the closure of any correspondent or payable-through accounts and the rejection of future transactions involving Sberbank or its foreign financial institution and subsidiaries. In the second place, OFAC added Sberbank and other affiliated entities added to the so-called “CAPTA list”²⁰, whose prohibitions will take effect beginning on 26 March 2022. In the third place, OFAC imposed full blocking sanctions on VTB Bank, Russia’s second-largest financial institution, thereby freezing its assets held in US

¹⁶ Council Decision (CFSP) 2022/395 of 9 March 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine, OJ L 81 of 09.03.2022.

¹⁷ Council Regulation (EU) 2022/394 of 9 March 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine, OJ L 81 of 09.03.2022.

¹⁸ Available at the following [LINK](#).

¹⁹ Available at the following [LINK](#).

²⁰ The list is a tool providing notice of OFAC actions with respect to foreign financial institutions for which the opening/maintaining of an account in the US is prohibited. For further information, see the following [LINK](#).

financial institutions and making them inaccessible. In the fourth place, OFAC imposed blocking sanctions on *Otkritie*, *Novikom* and *Sovcom*, three financial institutions playing significant roles in the Russian economy, and added *Vnesheconombank* and *Promsvyazbank* to the so-called “Specially Designated Nationals and Blocked Persons List” (SDN list)²¹. Finally, OFAC expanded Russia-related debt and equity restrictions to additional key-aspects of Russia’s economy and prohibited transactions and dealings by US persons or within the United States in new debt of longer than 14 days maturity and new equity of Russian state-owned enterprises and entities that operate in the financial services sector of the Russian Federation economy²².

The UK, for its part, introduced Russia (Sanctions) (EU Exit) (Amendment) Regulations 2022, which prohibits, amongst other things, i) dealing with securities or money-market instruments issued by, or providing loans/credit to, a person connected with Russia, its government or listed banks and subsidiaries²³, ii) establishing or continuing correspondent banking relationships and processing sterling payments to, from or via a “designated person” or a credit or financial institution owned or controlled by a listed bank, iii) providing financial services for the purpose of foreign exchange reserve and asset management to the Central Bank, the National Wealth Fund and the Ministry of Finance of Russia, iii) the export, supply, delivery and making available of dual-use and critical-industry goods and technologies²⁴, iv) the provision of technical assistance, financial services, funds and brokering services in relation to such goods and

technologies, v) Russian ships from entering UK ports, and vi) the registration of ships on the UK Ship Register if they are owned, controlled, chartered or operated by a designated person or a person connected with Russia²⁵. Furthermore, the soon to be voted Economic Crime (Transparency and Enforcement) Bill is expected to introduce the power to sanction individuals or companies already placed under sanctions by allies.

Similarly, Canada adopted measures according to the Special Economic Measures Act²⁶ and forbade Canadians and persons in Canada from i) dealing in any property located in the Luhansk and Donetsk regions that is owned, held or controlled by the region or a designated person, ii) importing, purchasing, acquiring or exporting goods to or from these regions, iii) providing financial or any other services related to dealings in property in these regions, iv) buying new Russian debt via the Central Bank, the National Wealth Fund and the Ministry of Finance, v) entering into any direct or indirect dealings with key-financial institutions²⁷, vi) entering into any direct or indirect dealings with various designated persons²⁸ in Russia and Ukraine, vii) exporting, selling, supplying or shipping goods listed in Schedule 4 of the Act to Russia or to any person in Russia for their use in offshore oil, shale oil or Arctic oil exploration and production, and viii) docking in Canada or passing through Canada by any ship that is registered in Russia or is used, leased or chartered by, on behalf of, or for the benefit of Russia, a person in Russia or a designated person. Furthermore, the government prohibited Canadians and persons in Canada from knowingly doing anything that causes,

²¹ The SDN list contains individuals and entities posing a threat to the US national security on foreign policy.

²² Directive 3 under E.O. 14024, “Prohibitions Related to New Debt and Equity of Certain Russia-related Entities”, available at the following [LINK](#).

²³ Such as *Sberbank*, *VTB Bank*, *Gazprombank*, *Vnesheconombank*, *Rosneft* and *Gazprom Neft*.

²⁴ Such as computers, telecommunications equipments, information security and electronics.

²⁵ For further information see the following [LINK](#).

²⁶ *Special Economic Measures Act* (S.C. 1992, c. 17).

²⁷ Such as *Sberbank*, *VTB*, *Vnesheconombank* and *Promsvyazbank*.

²⁸ Such as individuals who are key members of *Putin’s* inner circle, close contacts or family members.

facilitates or assists in, or is intended to cause, facilitate or assist in, any prohibited activity.

Australia too introduced several bans in order to respond to the Ukrainian crisis. More particularly, the newly enacted Autonomous Sanctions Amendment (Russia) Regulations 2022 provide for prohibitions from i) directly or indirectly supplying, selling or transferring to Russia arms or related materials²⁹ and items suited for use in oil exploration or oil production projects in Russia, ii) importing, purchasing or transporting arms or related materials if they originate in, or have been exported from, Russia, iii) dealing with financial instruments issued by, or providing loans or credit to listed publicly-owned or controlled Russian banks³⁰, listed Russian companies predominantly engaged in activities relating to military equipment or services, and listed publicly-owned or controlled Russian companies involved in the sale or transport of crude oil or petroleum products, iv) directly or indirectly making an asset available to a designated person or entity, and v) using or dealing with an asset, or allowing or facilitating another person to use or deal with an asset, owned or controlled by a designated person or entity. Furthermore, the Australian government decided to impose travel bans on President *Putin* and Security Council's members and to prohibit the export of any Australian goods to entities supplying the Russian military. Finally, the government decided to extend to the Donetsk and Luhansk regions of Ukraine, from 28 March 2022 onwards, the sanction measures already applied to Crimea and Sevastopol³¹, thereby targeting exports and commercial activities in relation to the transport, telecommunications, energy and exploitation of oil, gas and mineral

reserve sectors and prohibiting all imports.

Finally, with a historical decision, even Switzerland decided to align itself to the EU sanctions as well and adopt similar ones. Despite being obliged by international law to adopt the sanctions imposed by the UN, Switzerland had full discretion as to whether to comply with European measures or not in view of its traditional, century-long neutrality. Nonetheless, the government decided in the first place to freeze all assets belonging to or under the control of certain listed individuals, companies and entities³² and to prevent additional funds or from being provided to them³³. In the second place, the government introduced several financial restrictions such as prohibiting i) dealings in transferable securities or money-market instruments of any maturity issued by listed entities, ii) accepting deposits of more than EUR 100,000 from Russian persons, entities or any such person or entities residing in or established in Russia, iii) providing services on trading venues in relation to transferable securities of any state-owned legal entity in Russia, iv) selling euro-denominated transferable securities issued after 12 April 2022 to Russian persons or entities, v) providing specialized financial messaging services to listed banks, businesses or entities or to any bank, company or entity established in Russia which is controlled by any of them, and vi) all transactions related to the management of the Central Bank of Russia's reserves and assets. Finally, the Swiss government imposed several trade restrictions banning, on the one hand, the import or exports of goods from the areas of Donetsk and Luhansk and, on the other hand, to sell, deliver, export, transit or transport i) dual-use or high-tech items³⁴ intended for use in Russia as well as for military use in

²⁹ Such as vehicles, munitions, weapons etc....

³⁰ Such as *Russian State Development Bank, VEB, IS Bank, Promsvyazbank, Industrial Savings Bank, Genbank* and the *Black Sea Bank for Development and Reconstruction*.

³¹ For further information see the following [LINK](#).

³² Such as *Otkritie, Bank Rossiya, Promsvyazbank, Sovcombank, Vnesheconombank* and *VTB Bank*.

³³ Individuals targeted by the asset freeze are banned from entry and transit in Switzerland.

³⁴ Such as sensors, lasers, semiconductors and information security.

Ukraine, ii) goods related to the aviation and space industries to individuals or entities in Russia or that could be used there, and iii) goods and technology related to the petroleum refining sector to individuals and entities in Russia or that could be used there. Needless to say, the situation remains extremely tense and constantly

changing, and it is hardly possible at the moment to foresee further developments. What seems certain, is that the Russian government's decisions risk marking a point of no-return in international relations, with effects destined to durably affect all sectors of the world economy and financial system in the years to come.



Roberto A. Jacchia

PARTNER



r.jacchia@dejalex.com



+39 02 72554.1



Via San Paolo 7
20121 - Milano



Marco Stillo

ASSOCIATE



m.stillo@dejalex.com



+32 (0)26455670



Chaussée de La Hulpe 187
1170 - Bruxelles

MILANO

Via San Paolo, 7 · 20121 Milano, Italia
T. +39 02 72554.1 · F. +39 02 72554.400
milan@dejalex.com

ROMA

Via Vincenzo Bellini, 24 · 00198 Roma, Italia
T. +39 06 809154.1 · F. +39 06 809154.44
rome@dejalex.com

BRUXELLES

Chaussée de La Hulpe 187 · 1170 Bruxelles, Belgique
T. +32 (0)26455670 · F. +32 (0)27420138
brussels@dejalex.com

MOSCOW

Ulitsa Bolshaya Ordynka 37/4 · 119017, Moscow, Russia
T. +7 495 792 54 92 · F. +7 495 792 54 93
moscow@dejalex.com

