

## EU sanctions Q&A

Q&A and insights on the EU's 11<sup>th</sup> sanctions package

July 2023

### Q&A

Our International Trade & Customs team shares its insights and compliance thoughts relating to the latest EU's 11<sup>th</sup> sanctions package involving Russia which came into force on June 24, 2023.

#### *Could you summarise the most significant aspects of EU's 11th package?*

- Additional parties have been added to the lists of sanctioned entities and individuals subject to asset freeze measures. This includes two Russian banks, namely MRB Bank and CMR Bank, as well as well as certain Russian IT companies;
- Expansion of the list of prohibited goods and technology which might contribute to Russia's military and technological enhancement or to the development of its defence and security sector as well as specific machinery items which could contribute to the enhancement of Russian industrial capacities;
- Measures to prevent that EU sanctioned and trade restricted goods are being manufactured outside the EU by means of:
  - Prohibition to sell, license or transfer intellectual property rights or trade secrets related to prohibited goods and technology directly or indirectly to any party in Russia or for use in Russia;
  - Prohibition to grant rights to access or re-use any material or information protected by means of intellectual property rights or constituting trade secrets, related to goods and technology whose sale, supply, transfer or export to a party in Russia or for use in Russia is prohibited;
- Additional prohibitions relating to prohibited luxury goods in view of EU-Russia trade;
- Extension of a temporary derogation until 31 March 2024 to allow for the provision of prohibited services which are legally required for the divestment of Russian operators from the EU; and
- Inclusion of an "anti-circumvention measure" to prohibit EU trade with third countries that failed to prevent the circumvention of prohibited items exported from the EU.

Please see our periodically updated document for a more comprehensive [overview](#) of the current EU-Russia sanctions in place.

## *What is the “anti-circumvention measure”?*

It is a measure to prevent circumvention of sanctions by introducing the possibility to prohibit trade (including sale, license or transfer of intellectual property rights or trade secrets) with third countries that systematically and persistently fail to prevent that prohibited items – exported from the EU – end up in Russia.

Simply put, this measure would basically extend relevant EU-Russia prohibitions to those identified third countries in relation to certain specifically listed goods and technology being subject to EU-Russia trade restrictions. The inclusion of such third countries and specific goods and technology is to take place by unanimous decision of the EU Council. This means that the specific goods and technology and relevant third countries subject to this measure and prohibitions are still to be identified and published.

## *What is in your opinion the most difficult aspect when it comes to sanctions compliance?*

The question we often receive is: “when is it [i.e. sanctions due diligence] sufficient”?

In practice, we see that the following two aspects are found most complex in this context:

- Determining ownership and control of a non-sanctioned party

In the event that a non-sanctioned party is owned for more than 50% by a party listed and designated on an EU sanctions list, the non-listed party is also regarded as an EU sanctioned party.

This means that due diligence should not stop at sanctions screening the direct business partner. Its parent company and ultimate beneficial owners (“UBOs”) should also be screened and assessed against the ownership and control criteria of the EU sanctions.

- Circumvention

Many freely available reports and trade related data indicate that EU trade with countries in close proximity to Russia suddenly increased over the past months. EU businesses should be vigilant not to participate in prohibited trade circumvention of EU sanctions by conducting adequate due diligence being able to demonstrate that there are no reasonable grounds to suspect that their trade in goods or services would be in breach of EU sanctions.

In that regard, EU businesses cannot be held administratively or criminally liable in the EU if they did not know, and had no reasonable cause to suspect, that their actions would infringe the relevant EU sanctions.

In order to demonstrate that this is the case, we recommend among others to conduct the appropriate due diligence by asking (follow-up) questions if and when “red” or “orange” flags pop-up in the course of international trade. And last but not least, ensure to document your own due diligence steps and information as conducted step-by-step.

## **Bird & Bird’s sanctions screening app**

Our app consolidates various sanctions lists into one easy-to-use app. The app is available for free by scanning the below QR-code or by using the [web-based app](#).





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