

SANCTIONS TARGETING RUSSIA IN RESPONSE TO THE CRISIS IN UKRAINE

1. SUMMARY BACKGROUND

Tensions in and around Ukraine have been building up recently, reaching a new high since Russia's annexing of the Crimea region in 2014. A few hours ago, at around 5am Ukrainian time today, Russian forces have unleashed an attack on Ukraine: explosions from Russian cruise and ballistic missiles took place near major Ukrainian cities, including the capital Kiev targeting the country's infrastructure.

A major point of contention between the West, Ukraine and Russia lies in Ukraine's interest to join NATO and the West's openness to such an option, which Russia holds to be at odds with prior commitments on part of the West and which would further the encircling of Russia by NATO countries.

As easily apparent, beyond the issue of Ukraine's sovereignty and territorial integrity, the issue also more broadly puts into question Europe's entire security architecture.

For over a month now, Russia had been building up massive military strength at Ukraine's border, prompting fears of a Russian invasion of Ukraine. After weeks of, apparently fruitless, diplomatic back-and-forth, in the night of 21 February 2022, Russian President Vladimir Putin has proclaimed Russia's recognition of the independence of Ukraine's Luhansk and Donetsk separatist regions (collectively referred to as the Donbass region) ¹. In the wake of this recognition, President Putin has ordered Russian armed forces to assume a "peacekeeping mission" in those newly-independent regions.

In reaction, the US, UK, Germany and the EU have all announced sanctions. In addition, it is reported that US partner-countries, such as Singapore, Japan, and Taiwan, would align and also adopt sanctions targeting Russia (in particular, through export controls targeting high-tech items such as semiconductors).²

Military tension has further escalated since Putin's initial statements. On Thursday 24 February in the early morning, Putin announced a "special military operation" in Ukraine, following which Ukrainian authorities reported missile strikes at military facilities in Kyiv, Kharkiv and Dnipro and a pincer movement by Russia from Belarus to the north and from Crimea to the south. Ukrainian Foreign Minister Dmytro Kuleba designated the actions of Russia as a "full-scale invasion".³

Below, we outline the main sanctions adopted thus far by different parties in reaction to these developments.

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¹ Russia thus refers to those regions as the "People's Republic of Donetsk" and "People's Republic of Luhansk", abbreviated as "DNR" and "LNR".

² U.S. Urges Asian Allies to Cooperate on Russia Sanctions (foreignpolicy.com).

³ Blasts rock Ukraine as Putin declares war – POLITICO

2. US MEASURES

On 21 February 2022, US President Biden adopted the Executive Order on Blocking Property of Certain Persons and Prohibiting Certain Transactions With Respect to Continued Russian Efforts to Undermine the Sovereignty and Territorial Integrity of Ukraine.⁴

This Executive Order consists in the "first batch" of US sanctions adopted in response to Russia's recognition of the independence of the DNR/LNR regions, and sending of a "peacekeeping mission" in those territories.

Specifically, this first salvo of sanctions, which is very close to the one adopted in reaction to the annexing of Crimea in 2014, prohibits:

- new investment in the so-called DNR or LNR regions of Ukraine or such other regions
 of Ukraine as may be determined by the Secretary of the Treasury, in consultation
 with the Secretary of State (collectively, the "Covered Regions"), by a United States
 person, wherever located;
- the importation into the United States, directly or indirectly, of any goods, services, or technology from the Covered Regions;
- the exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever located, of any goods, services, or technology to the Covered Regions; and
- any approval, financing, facilitation, or guarantee by a United States person, wherever located, of a transaction by a foreign person where the transaction by that foreign person would be prohibited by this section if performed by a United States person or within the United States.

Further, the sanctions provide for the possibility for Treasury make individual designations and adopt blocking sanctions against those persons who

- operate in DNR/LNR regions,
- are a "leader, official, senior executive officer, or member of the board of directors of an entity operating" in the DNR/LNR regions,
- are owned or controlled by, or have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked
- have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, any person whose property and interests in property are blocked.⁵

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⁴ 20220221_eo_ukraine.pdf (treasury.gov)

In addition, on 22 February 2022, President Biden further indicated the US would adopt blocking sanctions on two Russian banks, comprehensive sanctions on Russian sovereign debt and sanctions certain individuals.⁶ Building on this, still on 22 February 2022, the US Treasury's Office of Foreign Assets Control ("OFAC") further set out the following sanctions⁷ under the authority conferred to it under Executive Order 140248:

Sanctioning of two banks:

- Corporation Bank for Development and Foreign Economic Affairs Vnesheconombank (VEB), and
- o Promsvyazbank Public Joint Stock Company (PSB), including 5 vessels owned by a PSB-subsidiary
- along with 42 of their subsidiaries.

Sanctioning of oligarchs:

- Denis Aleksandrovich Bortnikov, Deputy President of Russian-state owned financial institution VTB Bank Public Joint Stock Company (VTB Bank) and a Chairman of the VTB Bank Management Board;
- Petr Mikhailovich Fradkov, Chairman and CEO of PSB:
- Vladimir Sergeevich Kiriyenko, CEO of VK Group, the parent company of Russia's top social media platform, VKontakte.
- Sovereign debt restrictions: extension of existing sovereign debt prohibitions to cover participation in the secondary market for bonds issued after March 1, 2022 by the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation through the adoption of Directive 1A.9
- OFAC also released a number of new general licenses, concentrating on agriculture and medical (re)exports, mailing services, business of international organisations and other non-commercial activities or related to individuals in the targeted regions.

OFAC also added the of names of individuals and entities to its lists of Specially Designated Nationals ("SDN") and of Non-SDN Menu-Based Sanctions ("NS-MBS"). 10

It is noted that, while EO 14024 of 15 April 2021 identified the technology and defence sectors, through the "Determination Pursuant to Section I(a)(i) of Executive Order 14024" of 22

⁵ It is noted that US blocking sanctions usually extend to any party owned to at least 50% by one or more blocked parties, so one will need to determine whether a non-listed person/entity is owned by a blocked party.

Remarks by President Biden Announcing Response to Russian Actions in Ukraine | The White House

⁷ U.S. Treasury Imposes Immediate Economic Costs in Response to Actions in the Donetsk and Luhansk Regions | U.S. Department of the Treasury.

⁸ Executive Order 14024 of April 15, 2021. Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation.

⁹ Directive 1A under Executive Order 14024, Prohibitions Related to Certain Sovereign Debt of the Russian Federation, replacing and superseding Directive 1 issued on April 15, 2021 (available at <u>russia directive 1a.pdf (treasury.gov)</u>).

10 <u>Russia-related Designations; Issuance of Russia-related Directive 1A and General Licenses; Publication</u>

of new and updated Frequently Asked Questions | U.S. Department of the Treasury

February 2022, the financial services sector has been added to the list of potential targets for designation.¹¹

Finally, President Biden announced that he has directed his administration to impose sanctions on Nord Stream 2 AG and its corporate officers. The statements highlights the US's close consultation and cooperation with Germany on this matter.¹²

3. UK MEASURES

The Prime Minister <u>announced</u> to the House of Commons the initial tranche of sanctions on Russia. The following <u>press release</u> has been published. The sanctions package targets oligarchs and banks associated with the Kremlin.

This is clearly intended to be a **first package of a rolling programme** of sanctions of increasing effect as the situation in Ukraine develops.

By way of additional background, it is noted that the UK has implemented an independent sanctions policy and powers since 31 December 2020. The Sanctions and Anti-Money Laundering Act 2018 provides the legal framework for the imposition of UK sanctions and the implementation of UN sanctions. It sets out a different, post-Brexit, basis upon which the UK will impose financial sanctions going forward.

The current sanctions regime is governed by the Russia (Sanctions) (EU Exit) Regulations 2019 (SI, 2019, No. 855) which is largely based upon the regulations issued by the EU in 2014 and 2015. It is further recalled that, on 10 February 2022, amendments to the Russia (Sanctions) (EU Exit) Regulations 2019 were made under the Russia (Sanctions) (EU Exit) (Amendment) Regulations 2022 (SI, 2022, No. 123).

These broadened the scope of the designation criteria, enabling the UK to more readily designate a greater number of individuals and businesses associated with the Kremlin. These therefore move the UK position further from the EU regulations currently in force.

Also of relevance for potential future action is that the government has faced strong pressure from members of the ruling party to go much further in its sanctions against Russia.

Using those new powers introduced on 10 February, the UK has announced¹³ that it will:

- **freeze the assets** and impose **travel bans** on three leading members of the Russian elite of particular significance to the Kremlin:
 - Gennady Timchenko, Russia's sixth richest oligarch; and
 - o Boris and Igor Rotenberg, two long-standing associates of the regime.
- freeze the assets of five Russian banks:
 - Bank Rossiya;
 - o Black Sea Bank for Development and Reconstruction;
 - o IS Bank;
 - o Genbank; and
 - Promsvyazbank.

The UK will also sanction those **members of the Russian Duma and Federation Council** who voted to recognise the independence of Donetsk and Luhansk.

¹¹ russia_harmful_determination_20220222.pdf (treasury.gov)

¹² Statement by President Biden on Nord Stream 2 | The White House

Notice Russia 22022022.pdf (publishing.service.gov.uk)

In addition, over the coming weeks, the **territorial sanctions** (including the export control sanctions) that were imposed on **Crimea** in 2014/15 are to be extended to non-Government controlled territory in the so-called breakaway republics of Donetsk and Luhansk.

No UK individual or business will be able to deal with this territory until it is returned to Ukrainian control.

4. EU MEASURES

On 22 February, the European Council agreed on a first batch of sanctions targeting Russia, and the sanctions were published in the Official Gazette on 23 February. 14

The first sanctions package adopted by the EU is aimed at those persons and entities that have been involved in the actions regarding DNR/LNR regions.¹⁵ As mentioned in Commission President's Von der Leyen Press statement, the sanctions adopted by the EU at this stage are very close to those adopted by the EU in the wake of the annexing of Crimea in 2014.

In particular, the EU sanctions would consist in:

- Asset freeze and travel bans targeting all 351 members of the lower house of the Russian parliament who voted in favour of the recognition (those who abstained or opposed are not targeted);
- Asset freeze targeting 27 individuals and entities "who are playing a role in undermining or threatening Ukrainian territorial integrity, sovereignty and independence", including military, economic operators, disinformation exponents;
- Ban on trading in Europe of Russian state bonds;
- Import and export prohibitions on trade with the DNR/LNR regions;
- Restrictions on the Russian State and government on access to financial and capital markets and services;
- Carve-out of the DNR/LNR regions from a free trade deal between the EU and Ukraine;
- Banks involved in financing separatist activities in eastern Ukraine could also be targeted16.

It is also noted that on 21 February, just one day before, the EU updated the sanctions list concerning Crimea, adding Aleksei Yurievich Cherniak, Leonid Ivanovich Babashov, Tatiana Georievna Lobach, Nina Sergeevna Faustova and Aleksandr Evgenevich Chmyhalov, to the list of sanctioned persons.¹⁷

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¹⁴ Publications Office (europa.eu)

¹⁵ Press statement by President von der Leyen on the EU's response to the Russian aggression against Ukraine, 22 February 2022 (available at: <u>Press statement by the President (europa.eu)</u>).

¹⁶ EU's first batch of Russia sanctions to target 351 lawmakers, officials, banks – EURACTIV.com

¹⁷ Council Decision (CFSP) 2022/241 of 21 February 2022 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine; Council Implementing Regulation (EU) 2022/236 of 21 February 2022 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.

With this final batch of measures, restrictive measures as a response to Russia's interference with Ukraine's territorial integrity apply to a total of 555 individuals and 52 entities.¹⁸

5. GERMAN MEASURES

Thus far, Germany has announced that it is suspending the certification of the **NordStream 2** ("NS2") gas pipeline. While the construction of the pipeline has been finished a few months ago, it will not be able to enter commercial operation prior to the completion of the certification process.

In this regard, it is recalled that the NS2 project opens a supply line for gas directly connecting Germany with Russia, thus circumventing Ukraine through which the pipelines currently run. It is also recalled that the US has been trying for years to block the construction and completion of the NS2 pipeline, sanctioning pipe-laying vessels amongst others. This would open the door for exports of US shale gas into Europe.

Some have started questioning the fact that Germany's sanctions on Russia appear to achieve US objectives that Washington has not managed to obtain, any other way in the last few years.

6. FURTHER SANCTIONS?

For weeks now, Western capitals have negotiated with each other to align on potential sanctions in case of a Russian invasion of Ukraine.

Further sanctions are expected to be broader and harder-hitting, The situation is fast-changing and stronger sanctions could be put on the table, such as exclusion of Russia from the SWIFT system or a full ban from using the US dollar.¹⁹

In addition, as far as the possible efficiency of the sanctions, adopted or contemplated, is concerned, it should be noted that the situation today is quite different from the one in 2014. Since then, Russia has had time to reduce dependencies on the West and shield itself from damaging effects of sanctions ("sanction-proofing"), as well as increasing its leverage to hit back with counter-sanctions.

In this regard, we note Russia diversification of energy exports, including to China, its building up of (gold) reserves, its de-dollarization strategy conjunctly with other countries including China and Iran, reduction of public debt, and increase in revenue from soaring commodity prices ...

The following possibilities have been aired and could be adopted should Russia pursue its aggressive push in Ukraine:

6.1.1 United States

After Vladimir Putin's announcement of further military operations in Ukraine, Biden condemned the attack as unprovoked and unjustified and announced a G7 meeting on 24 February to discuss further consequences and sanctions.²⁰

¹⁸ <u>EU</u> adopts package of sanctions in response to Russian recognition of the non-government controlled areas of the Donetsk and Luhansk oblasts of Ukraine and sending of troops into the region - Consilium (europa.eu)

¹⁹ <u>Background Press Call by a Senior Administration Official on Russia Sanctions | The White House.</u>
²⁰ <u>Statement by President Biden on Russia's Unprovoked and Unjustified Attack on Ukraine | The White</u>

The following sanctions, though not limited to these, could be considered by the US in the gradual ratcheting-up of pressure should Russia not withdrawn:

- Sanctions further targeting Russian (State-owned)banks, such as Sberbank, VTB, Gazprombank, not limited to DNR/NR regions²¹;
- Sanctions affecting trading on the secondary market;
- Designation of further companies, including in the financial services, technology and defence sectors;
- Adoption of stringent export control rules (potentially through Foreign Direct Product Rule, as used against Huawei), targeting in particular commercial electronics, computers, aircraft parts and other goods and items critical to Russia's diversification efforts into high-tech sectors and hampering future military developments;

6.1.2 United Kingdom

A package of further sanctions have been prepared and it was announced that should Russia not de-escalate, the UK will shortly introduce legislation which will, amongst other steps, prevent Russia from issuing sovereign debt on UK markets.

A <u>motion</u> was tabled 22 February on the pre-existing legislation that gives some indication as to the swift action that is now possible under the 2018 Act.

Foreign Secretary Liz Truss further indicated on 23 February that "nothing is off the table" in the sanctions considered, and that next actions would target more banks, limiting Russia's ability to raise funds and operate internationally, as well as limiting trade and halting exports in high-tech items with the intention of targeting Russia's future military abilities.²²

The Foreign Secretary also indicated that discussions are ongoing within the G7 to agree on the next sanctions package.

Prime Minister Johnson announced that the UK will respond strongly to the increased military operations of Russia in Ukraine and he held a Cabinet Office Breaking Rooms emergency meeting in the early morning of 24 February. ²³ James Cleverly, Foreign Office minister, announced that incoming sanctions are "the largest and most severe economic sanctions passage Russia has ever seen." After the emergency meeting, Prime Minister Johnson state that the UK "will agree a massive package of economic sanctions designed in time to hobble the Russian economy".²⁴

6.1.3 European Union

The European Union had indicated earlier this week it has stronger, additional, package of sanctions ready that would be adopted should Russian armed forces move further into Ukraine, that is, beyond the separatist-held regions and which would constitute "invasion".

²¹ Background Press Call by a Senior Administration Official on Russia Sanctions | The White House. "No Russian financial institution is safe if this invasion proceeds. We are ready to press a button to take further action on the very largest Russian financial institutions, including Sperbank and VTB, which collectively hold almost \$750 billion in assets — or more than half the total in Russia as a whole."

²² Nothing is off the table in our response to Putin's aggression | LinkedIn

²³ UK will respond 'decisively' to Russia attack on Ukraine, vows Boris Johnson | Ukraine | The Guardian

²⁴ (1) UK politics live: Boris Johnson promises 'massive sanctions' after Russian invasion of Ukraine | Politics | The Guardian

While the package has not been made public, it is expected they would be, far broader in range, taking aim at the Russian economy as a whole, rather than the surgical approach adopted thus far. 25

After Putin's announcement of a special military operation in Ukraine on 24 February, which has a far-reaching scope beyond separatist regions, EU Council President Charles Michel announced that the EU will adopt new sanctions against Russia. New measures will be discussed at an emergency meeting on Thursday 24 February evening. ²⁶ Potential new targets, as announced by Von der Leyen, include strategic sectors of Russian economy, key technologies, Russian banks and financial system. Several EU leaders indicated their support for a strong response against Russia, including leaders of France, Germany, Italy, Belgium, and Spain.

It remains that as of today, EU sanctions are of lower intensity compared to US and UK sanctions.

Finally, it is also worth noting that individual EU member states can impose additional sanctions.

7. WHAT'S NEXT FOR COMPANIES?

> The sanctions adopted thus far are broadly similar to **Crimea-sanctions**. As such, they are aimed at targeting Russia and the separatist regions, without inflicting harm on the sanctioning countries' industries.

Thus far, impact on EU business should be rather limited. Also noted that, as territorial sanctions are so far limited to DNR and LNR and that these regions have been engulfed in civil war for the last few years, it is rather unlikely that Western companies have operations in those areas and that they would thus be much affected by the sanctions adopted hitherto. However, if Russia follows its trend of increasing military action in Ukraine, further severe sanctions are expected.

- Vigilance to sanctions adopted, updated, and others to come:
 - Throughout those jurisdictions having adopted sanctions, particularly the EU, US and UK, it should be expected that lists of sanctioned persons and entities will be updated and broadened. Particular caution is called for. In addition, the list of prohibited transactions, depending on sanctioned sectors, in the separatist regions is likely to be expanded. Here too, particular attention should be had for any transaction that might have those regions as a final destination.

As for other sanctions, **rigorous due diligence** and compliance regimes within the companies are key.

- It is expected that the US and UK sanctions will be harsher than those that the EU imposes and that, therefore, commercial groups with operations in both EU, US and UK jurisdictions (such as some oil and commodities traders) will have an evolving compliance position to monitor and demonstrate compliance with.
- Switzerland: If the country follows its 2014 position, it will not adopt sanctions itself, but rather limit itself to preventing circumvention of EU sanctions via Switzerland. Nevertheless, in light of the recent "Credit Suisse" leaks, Switzerland could perhaps

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²⁵ <u>Ukraine crisis: EU agrees to Russia sanctions package | News | DW | 22.02.2022</u>.

²⁶ EU to hit Russia with fresh sanctions after invasion – POLITICO

align its position on EU sanctions to regain goodwill and avoid the country from being added to the list of high-risk third countries ("blacklist") for financial crime/money laundering.27

- As expected, Canada has also just announced it is adopting sanctions on Russia. While the relevant sanctions regulations have not yet been published, sanctions would include:
 - list-based sanctions against members of the Russian State Duma who voted for the decision to recognize the independence of the DNR/LNR,
 - prohibitions against dealings with or in the non-government controlled areas of Donetsk and Luhansk;
 - prohibitions on direct and indirect dealings in Russian sovereign debt; and
 - sanctions against two significant Russian financial institutions.²⁸

These sanctions broadly mirror those adopted by the EU.

Following increased military activities on 24 February, Prime Minister Justin Trudeau further condemned Russia and pointed to the planned G7 meeting for further measures.29

- Japan will also implement economic sanctions against Russia and two separatist regions of Ukraine,30 in the form of:
 - Suspension of visa issuance for officials from the two regions
 - Freezing the assets of officials from the two regions
 - Export and import ban for these regions
 - Prohibition of issuance and trading of new Russian sovereign bonds in Japan.
- For its part, Australia has also indicated that it is coordinating with the US, the UK and the EU in particular, stating that it is "prepared to announce swift and severe sanctions that would target key Russian individuals and entities responsible for undermining Ukraine's sovereignty and territorial integrity".31

On 23 February 2022, the country announced it was adopting the following sanctions32.

GIDE LOYRETTE NOUEL A.A.R.P.I. | 15 rue de Laborde - 75008 Paris | tel. +33 (0)1 40 75 60 00 | info@gide.com - gide.com

 ²⁷ Switzerland at risk of EU blacklist after Credit Suisse leak | Credit Suisse | The Guardian.
 28 Prime Minister of Canada, "Canada announces support to address the situation in Ukraine", February 22, 2022 (available at: Canada announces support to address the situation in Ukraine | Prime Minister of Canada (pm.gc.ca)).

Statement by the Prime Minister on Russia's attack on Ukraine | Prime Minister of Canada (pm.gc.ca)

³⁰ Japan imposes sanctions on Russia and separatist regions of Ukraine after actions by Moscow | The

Australia condemns Russia's unlawful moves on eastern Ukraine | Australian Minister for Foreign Affairs Minister for Women (foreignminister.gov.au).

³² Australia's response to Russia's aggression against Ukraine | Australian Minister for Foreign Affairs Minister for Women (foreignminister.gov.au)

- travel bans and targeted financial sanctions on eight members of Russia's Security Council;
- targeted financial sanctions on Rossiya Bank, Promsvyazbank, IS Bank, Genbank and the Black Sea Bank for Development and Reconstruction (idem UK), as well as restrictions on investing in state development bank VEB.
- extension of existing sanction targeting Crimea/Sebastopol to DNR/LNR through amending the Autonomous Sanctions Regulation 2011. This will result in trade prohibiting with the regions in the following sectors: transport, energy, telecommunications, and oil, gas and minerals; and
- broadening the scope of people and entities that Australia can list for sanctions to include those of "strategic and economic significance to Russia" in alignment with the US and UK. This would point to the sectors of technology, defence and financial services.
- South Korea's President Moon Jae-in stated that they would join other countries by imposing economic sanctions against Russia.³³ North Macedonia is also among the countries siding with EU's package of sanction.³⁴
- NATO will hold a virtual summit tomorrow, Friday March 25
- Expect counter-sanctions on part of Russia. While counter-sanctions are, however, likely to be rather limited in terms of compliance (perhaps mirror-sanctions). The pain would rather likely be felt in energy prices affecting companies' costs and operations if Russia decreases its exports to Europe.
 - In particular, it is noted that, following Germany's announcement of the suspension of the certification of NS2, Dmitry Medvedev, former President and current deputy chairman of Russia's Security Council, indicated **gas prices** in the EU would soar to \leq 2.000 per 1.000 m^{3 35}
- In the EU, it is likely that discussions around green and renewable energy will be impacted. One of the, long-term, actions that have been identified as necessary to lessen Russian leverage on Europe lies in the diversification of energy supplies. One such option, in line with the Green Deal, concerns the reduction of natural gas in the energy mix, which is expected to put nuclear power back on the table, and in a different light.

35 EU will soon pay double for gas – Medvedev — RT Business News.

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³³ South Korea to join economic sanctions against Russia - CNA (channelnewsasia.com)

³⁴ Bujar Osmani sur Twitter: "In response to tdy's Ru unprovoked invasion of υΑ, @VladaMK has just decided to join the latest #EU's package of sanctions against Russia. Furthermore, ΜΚ will join all #CFSP decisions regarding territorial integrity of UA thus amounting 100% alignment with the EU" / Twitter