



# ARTICLE

## SANCTIONS | EU ADOPTION OF THE 11TH WAVE OF ECONOMIC AND INDIVIDUAL SANCTIONS AGAINST RUSSIA

European Law | 03/07/23 | Olivier Attias



On June 21, 2023, the Council of the European Union announced the approval of the eleventh set of sanctions against Russia, in response to the escalating conflict in Ukraine. The stated goal is to enhance the effectiveness of implementing and enforcing the existing sanctions, leveraging insights gained from their application over the past year.

The eleventh package of sanctions, consisting of three regulations[1] and two decisions[2], encompasses several notable measures.

### 1. Trade Measures:

- **New anti-evasion measures have been introduced, granting the EU the authority to limit the sale, provision, transfer, or export of specific goods and technologies subject to sanctions to certain third countries deemed high-risk for potential use in evading the sanctions.**

This eleventh package of sanctions marks a turning point in the fight against the circumvention of EU-imposed sanctions, particularly through third-party countries. To effectively address a major challenge concerning the efficacy of economic sanctions, the EU has adopted a dual mechanism that combines both prevention and repression of circumvention measures.

In terms of prevention, the EU has established its framework based on strengthening bilateral and multilateral cooperation with third-party countries. This approach aims to maintain diplomatic dialogue and provide increased technical assistance from the EU.

Regarding repression, the EU has devised an escalating regime of measures to effectively combat the "systemic" circumvention of sanctions by third-party countries. If bilateral or multilateral cooperation fails, targeted individual measures will be adopted against the involved entities[3], followed by a "constructive" and "in-depth" dialogue with the third-party country if necessary. If these efforts prove unsuccessful, the EU retains the option to implement "exceptional last-resort measures" against the third-party country. These measures would restrict the sale, provision, transfer, or export of goods and technologies falling under the scope of Regulation (EU) 833/2014, when they are deemed to be constantly and highly vulnerable to being exploited for circumvention in favor of Russia. Such measures can only be adopted by the Council through a unanimous vote, leading to the inclusion of the country, goods, or technologies on a new list of sanctioned countries.

- **The transit prohibition for certain sensitive goods has been expanded.**

Also contributing to reducing the risk of sanctions evasion, this measure prohibits, during exports to third countries, the transit of the following goods and technologies through Russia:

- Goods and technologies that could contribute to the military and technological reinforcement of Russia or the development of its defense and security sector, as listed in Annex VII of Regulation (EU) 833/2014
- Goods and technologies suitable for use in the aviation or space industry, as listed in Annex XI of the same regulation, along with aviation fuels and fuel additives listed in Annex XX of the same regulation

- **87 new entities have been added to the list of corporate entities directly supporting the Russian military-industrial complex.**

87 new entities that directly support the military-industrial complex of the Russian Federation in its conflict with Ukraine have been added to the list. These entities are now subject to stricter export restrictions for dual-use and high-tech products. In addition to the already listed Russian and Iranian entities, this list now includes entities registered in China, Uzbekistan, the United Arab Emirates, Syria, and Armenia. This list, which triggers more stringent export limitations on sensitive goods and technologies, notably includes:

- Entities contributing to the construction and supply of unmanned aerial vehicles (drones) to Russia
- Entities involved in circumventing commercial restrictions on sensitive goods and technologies
- Russian entities participating in the development, production, and supply of electronic components

- **Restrictions on the import of steel products have been strengthened, imposing stricter conditions for importers.**



The Council is enhancing export restrictions by requiring importers of sanctioned iron and steel products, which have undergone processing in a third country, to demonstrate that the inputs used do not originate from the Russian Federation.

- **New prohibitions have been implemented, particularly affecting intellectual property and certain types of machine components.**

Firstly, concerning items contributing to the military and technological reinforcement of Russia or the development of its defense or security sector, new items have been added, including electronic components, semiconductor materials, manufacturing and testing equipment for electronic integrated circuits and printed circuit boards, precursor materials for energy substances and chemical weapons, optical components, navigation instruments, and metals used in the defense and maritime equipment sector. New firearms, parts, essential components, and ammunition have also been included.

Secondly, regarding intellectual property restrictions, it is now prohibited to (i) sell, license, transfer in any other way intellectual property rights or trade secrets, and to grant consultation or reuse rights to any protected material or information under intellectual property rights or constituting trade secrets, directly or indirectly, to Russian individuals or for use in Russia, provided that (ii) they are related to goods and technologies whose export to Russia is prohibited and to the supply, manufacture, maintenance, and use of such goods and technologies.

- **The structure of the annex concerning industrial products has been streamlined to enhance the identification of goods subject to export prohibitions.**

## **2. Measures in the field of transportation:**

Restrictions have been implemented for Russian trucks, as well as for ships that may violate the prohibition on importing Russian oil.

Several port access prohibitions have been established for vessels suspected of violating sanctions, such as ships engaging in manipulation or deactivation of their navigation tracking systems.

## **3. Measures in the field of energy:**

Germany and Poland have been deprived of the ability to import Russian oil through pipelines.

Exceptions have been introduced to the existing export prohibitions to allow for the maintenance of the *Caspian Pipeline Consortium (CPC)* pipeline, which transports Kazakh oil to the EU via the Russian Federation.

## **4. Listings on the Sanctions List:**

- **Over 100 additional individuals and entities are now subject to asset freezes.**

This includes high-ranking military officials, key conflict actors, individuals involved in the illegal deportation of Ukrainian children to the Russian Federation, judges who have made politically motivated decisions against Ukrainian citizens, individuals engaged in the looting of cultural heritage, businesspersons, propagandists, as well as Russian IT companies providing crucial technologies and software to Russian intelligence services, banks operating in occupied territories (MRB Bank and CMR Bank), and entities collaborating with the armed forces of the Russian Federation.

- **The EU has expanded the listing criteria that can be utilized to add individuals and entities to its restricted party list.**

In addition to individuals and entities facilitating breaches of the EU sanctions circumvention prohibition, the Council can now designate those who contribute to "a significant thwarting of the said restrictive measures." To interpret these new criteria, the Regulation specifies that "indicators of cases of thwarting Union restrictive measures include the principal activity of an operator from a third country being the purchase of goods subject to restrictions within the Union that ultimately reach Russia, involvement of Russian individuals or entities at any point, recent establishment of a company for purposes related to goods restricted to Russia, or a substantial increase in the turnover of a third-country operator participating in these activities" (Recital 2 of Regulation (EU) 2023/1215).

Furthermore, corporate entities or organizations operating in the Russian IT sector are now also subject to potential designation if they hold a license issued by the Center for Licensing, Certification, and State Secret Protection of the Federal Security Service of the Russian Federation or a "weapons and military equipment" license issued by the Russian Ministry of Industry and Trade.

- **Furthermore, on June 5, 2023, the EU had already broadened the scope of the listing criteria for individuals subject to restrictive measures.**



It is noteworthy that the European Commission has also updated several FAQs pertaining to the insurance and reinsurance sector, oil imports, circumvention and due diligence procedures, service provisions, road transportation, as well as the sale of securities[4].

Specifically, the Commission has clarified that national authorities have the authority to refuse granting one of the authorizations provided for in Regulations 269/2014 and 833/2014 when they have reasonable grounds to suspect that obtaining the authorization would be an attempt to bypass European sanctions. Two situations are provided as examples:

- The authority possesses information (confidential or public) that one of the parties involved in the operation for which the authorization is being sought is engaged in circumvention schemes or
- Elements of the operation are suspicious, such as an unusually low price or the inability to identify one of the parties[5]

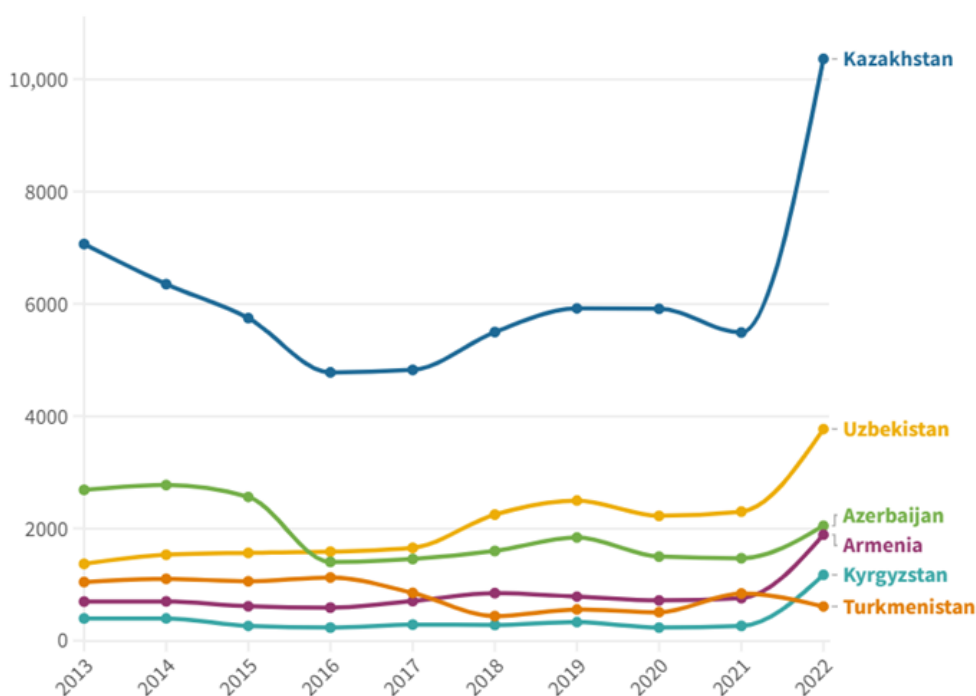
### **Focus: The Extraterritoriality of European Law as a Tool to Combat Economic Sanctions** **Evasion**

By implementing a hierarchical system to combat the circumvention of EU sanctions, culminating in the adoption of measures against third countries, the EU significantly enhances the effectiveness of its sanctions and concurrently expands the extraterritorial reach of European law with the establishment of a regime akin to secondary sanctions.

This change in direction is driven by specific observations: since February 2022, a notable increase in EU exports, particularly to countries in the Caucasus and Central Asia, has been noted, suggesting a potential rerouting of products to Russia.

### **EU exports to selected countries**

In million euro



Source: Eurostat

These new provisions constitute a concrete response to these developments, reflecting the EU's determination to enhance the effectiveness of its sanctions.

Indeed, Article 12 of Regulation (EU) 833/2014 prohibits "*knowingly and intentionally participating in activities with the object or effect of circumventing the prohibitions set out in this Regulation.*"

In principle, this prohibition applies to all parties and operators subject to European sanctions, whose scope is defined in the same terms in Article 13 of Regulation (EU) 833/2014 and Article 17 of Regulation (EU) 269/2014:

"*This Regulation shall apply:*



a) within the territory of the Union

b) on board any aircraft or any vessel falling under the jurisdiction of a Member State

c) to any person, within or outside the territory of the Union, who is a national of a Member State

d) to any legal person, entity, or body, within or outside the Union, established or constituted under the law of a Member State

e) to any legal person, entity, or body with regard to any commercial transaction carried out wholly or in part within the Union."

The Regulations initially provided flexible connecting factors through a dual territorial and personal application, without directly addressing a true extraterritoriality of sanctions aimed at capturing actors operating both outside the territory of the Union and who are non-European nationals.

That is now a thing of the past: the inclusion not only of non-nationals and non-EU operators within the scope of the European Regulations' jurisdiction but also of third countries themselves takes the form of deterrence measures through the establishment of a regime akin to secondary sanctions.

Indeed, the Council already had the ability to freeze assets and impose a ban on the provision of funds or economic resources for any natural or legal person, entity, or body that facilitates, and now significantly thwarts, the sanctions imposed by the EU against Russia.

Henceforth, when circumvention schemes present a systemic risk linked to third countries directly, Regulation (EU) 833/2014 (new Article 12 *septies*) also provides the possibility of directly imposing sanctions on third countries in which (i) goods and technologies, the export of which to Russia is prohibited, "*present a high and continuing risk of being sold, supplied, transferred, or exported from third countries to Russia after having been sold, supplied, transferred, or exported from the Union, particularly dual-use goods and technologies as well as goods and technologies capable of contributing to Russia's military and technological strengthening or the development of its defense and security sector,*" and (ii) the Council has "*established [that these third countries] systematically and persistently failed to prevent the sale, supply, transfer, or export to Russia [of these goods and technologies] exported from the Union, despite prior contacts by the Union with the countries in question and the Union's assistance.*"

The sanctions envisaged against these countries, which will be listed in Annex XXXIII of the same regulation (currently empty), comprise:

- Prohibition of selling, supplying, transferring, or exporting, directly or indirectly, goods and technologies listed in the same annex, whether originating from the Union or not, to any natural or legal person, entity, or body in the sanctioned third country
- Prohibition of providing technical assistance, brokering services, or other services related to the goods and technologies listed in Annex XXXIII and the supply, manufacturing, maintenance, and use of these goods and technologies, directly or indirectly, to any natural or legal person, entity, or body in the specified third country
- Prohibition of providing financing or financial assistance related to these goods and technologies, for any sale, supply, transfer, or export of these goods and technologies, or for providing technical assistance, brokering services, or other related services, directly or indirectly, to any natural or legal person, entity, or body in the specified third country
- Prohibition of selling, licensing, or otherwise transferring intellectual property rights or trade secrets, as well as granting rights to access or reuse any material or information protected by intellectual property rights or constituting trade secrets, related to these goods and technologies and the supply, manufacturing, maintenance, and use of these goods and technologies, directly or indirectly, to any natural or legal person, entity, or body in the specified third country.

This regime of sanctions against third countries is thus similar in its scope and prohibitions to the one applied against Russia and Russian operators directly. Furthermore, the new Article 12 *septies* stipulates that the exemptions and authorizations provided for by the Regulation for operations with Russian entities or bodies also apply to entities, individuals, and bodies from the sanctioned third countries (Sections 4 and 5 of Article 12 *septies*).

Hence, this eleventh series of sanctions signifies a significant evolution in the European Union's policy. By expanding the spectrum of the extraterritoriality of European law and equipping itself with a tool comparable to U.S. secondary sanctions, the EU is undergoing a paradigm shift.

Only time will tell the effectiveness of this measure and the political willingness of the member states to implement it.

---

[1] Council Regulation (EU) 2023/1214 of 23 June 2023 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of actions by Russia undermining the situation in Ukraine.



Council Regulation (EU) 2023/1215 of 23 June 2023 amending Regulation (EU) No 269/2014 concerning restrictive measures in view of actions compromising or threatening the territorial integrity, sovereignty, and independence of Ukraine.

Council Implementing Regulation (EU) 2023/1216 of 23 June 2023 implementing Regulation (EU) No 269/2014 concerning restrictive measures in view of actions compromising or threatening the territorial integrity, sovereignty, and independence of Ukraine.

[2] Council Decision (CFSP) 2023/1217 of 23 June 2023 amending Decision 2014/512/CFSP concerning restrictive measures in view of actions by Russia destabilizing the situation in Ukraine.

Council Decision (CFSP) 2023/1218 of 23 June 2023 amending Decision 2014/145/CFSP concerning restrictive measures in view of actions compromising or threatening the territorial integrity, sovereignty, and independence of Ukraine.

[3] Through designation under Regulation (EU) 269/2014 concerning restrictive measures and asset freezes, as well as Annex IV of Regulation (EU) 833/2014.

[4] Source: [https://finance.ec.europa.eu/eu-and-world/sanctions-restrictive-measures/sanctions-adopted-following-russia-as-military-aggression-against-ukraine/frequently-asked-questions-sanctions-against-russia\\_en](https://finance.ec.europa.eu/eu-and-world/sanctions-restrictive-measures/sanctions-adopted-following-russia-as-military-aggression-against-ukraine/frequently-asked-questions-sanctions-against-russia_en)

[5] FAQ "Circumvention and Due Diligence," Question 8, updated on 30 June 2023.

---