FINNIUS

New sanctions against Russia – regulatory expectations

3 March 2022

6 MINUTES

Given the current unprecedented situation in Ukraine, the European Union has been imposing very strict economic sanction on Russia and certain Russian companies, institutions and individuals. These sanctions aim to punish actions that undermine or threaten the territorial integrity, sovereignty and independence of Ukraine.

Your institution must pay close attention to these sanctions on a continuous basis. Both DNB (see e.g. link) and the AFM (see e.g. link) have issued several news items on this subject.

Sanctions

On 21, 23, 25, 28 February, 1 and 2 March 2022, the sanctions regime was amended with regards to restrictive measures relating to actions that undermine or threaten the territorial integrity, sovereignty and independence of Ukraine. Please find below an overview of the most relevant EU sanctions regulations, in chronological order, for financial institutions in light of the crisis in Ukraine from 21 February 2022:

- 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 (link);
- Council Regulation (EU) 2022/259 of 23 February 2022 amending Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (link)
- Council Implementing Regulation (EU) 2022/260 of 23 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 (link);
- Council Implementing Regulation (EU) 2022/261 of 23 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 (link);
- Council Regulation (EU) 2022/262 of 23 February 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (link) and (link);
- Council Regulation (EU) 2022/263 of 23 February 2022 concerning restrictive measures in response to the recognition of the non-government controlled areas of the Donetsk and Luhansk oblasts of Ukraine and the ordering of Russian armed forces into those areas (link);
- 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 (link);
- Council Regulation (EU) 2022/330 of 25 February 2022 amending Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or

threatening the territorial integrity, sovereignty and independence of Ukraine (link);

- Council Implementing Regulation (EU) 2022/332 of 25 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 (link);
- Council Regulation (EU) 2022/334 of 28 February 2022 amending Council Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (link) and (link);
- Council Implementing Regulation (EU) 2022/336 of 28 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 (link) and (link);
- Council Regulation (EU) 2022/345 of 1 March 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (link);
- Council Regulation (EU) 2022/350 of 1 March 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (link);
- Council Implementing Regulation (EU) 2022/353 of 2 March 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 (link); and
- Council Regulation (EU) 2022/355 of 2 March 2022 amending Regulation (EC) No 765/2006 concerning restrictive measures in view of the situation in Belarus (link).

Please note that as per 3 March 2022, there is no consolidated version available of the sanctions regulations aforementioned. The European Council, however, has published an extensive timeline of the restrictive measures of the EU in response to the crisis in Ukraine (link). If financial instructions would like to keep up-to-date with the current state of affairs, they can subscribe to the DNB and AFM Sanctions Alert (link).

What does the AFM/DNB expect from institutions?

- Check whether these, new, regulations apply to anyone that qualifies as a relation under the Dutch Sanctions Act (Sw);
- If these regulations are applicable, apply the commandments and prohibitions in the regulation immediately: freeze the assets and/or economic resources, prevent the assets and/or economic resources from being made available directly or indirectly, and prevent the prohibited financial services from being provided;
- Report the 'hit' immediately to the relevant supervisor (DNB of AFM) by completing a report form and sending it to the DNB/AFM;

- If DNB/AFM asks questions in response to the notification, answer them promptly;
- Also check whether the ‘hit’ can be designated as an unusual transaction within the meaning of the Dutch Anti-Money Laundering and Terrorist Financing Act (Wwft). If so, report this transaction to FIU-Netherlands without delay; and
- In certain cases, a ‘hit’ can also be an incident within the meaning of Article 1 of the Market Conduct Supervision (Financial Institutions) Decree (BGfo) or Article 1 of the Decree on Prudential Rules under the Wft (Bpr). Check whether this is the case. If so, also report the hit as an incident to the relevant regulatory supervisor (DNB/AFM).

Violation of sanctions regulations

Everyone must avoid acting in violation of sanction regulations. Violating sanction regulations is an economic offence and therefore punishable. It also prohibited to participate, knowingly or intentionally, in activities of which the purpose or effect is to circumvent the sanctions imposed. If financial institutions observe possible signs of circumvention, they should also report this to DNB/AFM. In this respect, it is also important to note that DNB/AFM expect that financial institutions have adequate procedures/systems, including an effective compliance function (if present), in place to ensure compliance with the applicable sanctions regulations (i.e. the Sw).

Renewed hits

After having consulted DNB we share our view that financial institutions should assess, in case the financial institution already notified a relation to DNB under an applicable sanctions regime on previous occasion, whether the amendments to the scope of the sanctions regulations brings about that such relation should be re-notified to DNB. If the latter is the case, the financial institution should notify the relevant relation again to DNB.

Questions?

Feel free to reach out if you have any questions regarding the impact of the new sanction regime on your business.

The relevant authorities can be reached via the following points of contact:

- DNB can be emailed for questions about supervision-related topics via: sancties@dnb.nl. DNB aims to respond within three working days. Please note that DNB is not in a position to provide advice.
- In case the AFM is your relevant supervisor with respect to the Sw, the AFM has indicated that you can contact AFM via: meldingsanctiewet@afm.nl.
- The Ministry of Finance can be emailed about the interpretation of regulations on freezing as well as exemptions via: sancties@minfin.nl.

The developments surrounding the situation in Ukraine are currently unfolding in rapid succession. The regulatory supervisors expect that institutions ensure that they keep abreast of the latest developments.

Specialists

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