

Luxembourg newsflash

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Restrictive measures recently adopted against the Russian Federation in relation with events in Ukraine: how will they affect you?

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In response to the downing of the Malaysian Airlines Flight MH17 in Donetsk and in view of the gravity of the overall situation, the Council of the European Union has adopted new restrictive measures targeting cooperation and exchanges with the Russian Federation.

These measures are intended most notably to limit access to EU capital markets for Russian state-owned financial institutions, impose a ban on trade in arms as well as on dual goods for military end-users and restrict Russian access to high-end technologies related to oil exploitation ([Council Decision 2014/512/CFSP](#) and [Council Regulation \(EU\) n° 833/2014](#) both entered into force on 1 August 2014).

Despite certain exceptions, the prohibitions are widely applicable in terms of time and space. Lastly, while sanctions may be imposed in the event of intentional breaches of the prohibitions, remedies are nevertheless available to any persons and entities adversely affected.

Types of restrictive measures directed at the Russian Federation

The package of measures directed at the Russian Federation imposes restrictive measures in the fields of finance, trade in military arms and related material, dual-use goods and technology and the exploitation of oil resources in Russia.

The Council of the European Union has also expanded the list of persons and entities subject to sanctions adopted in March ([Council Decision 2014/508/CFSP](#) and [Council Regulation \(EU\) 826/2014](#) which both entered into force on 30 July 2014) and has included a ban on investments in strategic industrial sector transport, telecommunications, energy and the exploitation of oil, gas and minerals in the Crimea and Sevastopol ([Council Decision 2014/507/CFSP](#) entered into force on 30 July 2014; and [Council Regulation \(EU\) n° 825/2014](#), entered into force on 31 July 2014).

Application of the restrictive measures

The restrictive measures are directly applicable and binding on the Member States. They apply within the territory of the European Union, including its airspace, on board any aircraft or any vessel under the jurisdiction of a Member State, to any person inside or outside the territory of the EU who is a national of a Member State, to any legal person, entity or body, inside or outside EU territory which is incorporated or constituted under the law of a Member State and to any legal person, entity or body in respect of any business done in whole or in part within the EU.

A *contrario*, it seems that a national of a country that is not part of the European Union, even if he is located within the EU, is not concerned by these sanctions.

Under certain conditions, transactions concluded prior to the entry into force of restrictive measures may be excluded from the application of the prohibitions.

Finally, the participation, knowingly or intentionally, in activities the object or effect of which is to circumvent the application of the restrictive measures is prohibited.

Sanctions for breach of the restrictive measures

Natural or legal persons and entities or bodies which knowingly act in breach of the restrictive measures will be held liable.

The legal acts adopted by the Council require that Member States adopt rules and penalties applicable to the infringement of the prohibition. In this regard, a [proposal](#) was introduced in Luxembourg on 30 July 2014.

Please note that in Luxembourg, certain provisions already applicable, for example, to the banking and prudential sector are legal provisions and as such aim at ensuring compliance with measures such as those currently adopted by the Council of the European Union.

Remedies and legal recourse

Persons and entities may submit a request to the Council in order to request that the decision to include them in the list of sanctions be reconsidered (see [Council Notice 2014/C 249/02](#)).

Persons and entities concerned may also challenge Council Decisions and Regulations before the General Court of the European Union.

These types of restrictive measures and sanctions adopted by the Council of the European Union are already subject to extensive litigation before the Court of Justice of the European Union where more than two hundred cases in this field have been lodged.

As a matter of law, the principle of free movement of capital is applicable within the European Union as well as with respect to relationships with third countries. While the adoption of restrictive measures impacting the free movement of capital, for instance by freezing assets and funds, is not per se incompatible with the Treaty provisions protecting this freedom, such restrictive measures must nevertheless be duly justified and strictly proportionate.

In addition, procedural guarantees and fundamental rights which European Union law confers on persons liable to be adversely affected by EU decisions are equally applicable in the area of restrictive measures.

However, please note that no claims in connection with any contract or transaction the performance of which has been affected by the restrictive measures related to finance, trade in military arms and related material, dual-use goods and technology and the exploitation of oil resources in Russia, shall be satisfied if they are made by, on behalf of or through legal persons, entities or bodies established outside the European Union, or by or on behalf of any other Russian person, entity or body.

To follow the developments, you may consult the websites of the [competent authorities in Luxembourg](#), including the [Luxembourg prudential surveillance authority](#) (CSSF), the [Luxembourg Ministry of Finance](#) as well as the European Commission's [consolidated list](#) of persons subjected to sanctions.

Please contact us should you require any further information.

This publication is intended to provide information on recent legal developments and does not cover every aspect of the topics with which it deals. It was not designed to provide legal or other advice and it does not substitute for the consultation with legal counsel before any actual undertakings.

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