

# ECONOMIC SANCTIONS AND INTERNATIONAL BUSINESS

An Italian-US Perspective on Sanctions  
Triggered by the Russian-Ukrainian  
Conflict

by

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# Foreword

The United States and the European Union have adopted sanctions, or restrictive economic measures, against the Russian Federation due to its military aggression against Ukraine.

Sanctions are aimed at pressing the Russian Federation to cease its wrongful acts and withdraw from Ukraine in compliance with Ukraine's territorial integrity, sovereignty, and independence. Sanctions also target Belarus and the so-called DNR and LNR regions of Ukraine.

Economic sanctions are affecting the activities that US and EU individuals are carrying out with partners from Russia or in Russian territory. There is a wide range of impacts, such as terminated contracts, interrupted inbound or outbound financial services, interrupted transfers of goods toward the Russian territory, and ceased investments in Russia or in Russian entities.

Generally, individuals under the jurisdiction of the US and the EU Member States are prohibited from directly or indirectly participating in activities that circumvent or have the effect of circumventing the sanctions. Consequently, US and EU persons must conduct appropriate due diligence to avoid importing and exporting goods or services to and from third countries when the risk that those goods and services reach sanctioned persons and regions is high.

On the other hand, the laws and regulations imposing sanctions also provide for certain derogations that rely mostly on licenses and authorizations.

Despite being united against Russia's unlawful acts and imposing similar sanctions, the US and EU sanctions differ, specifically with respect to so-called "secondary sanctions." They also differ in terms of derogation approaches.

Moreover, when it comes to implementing EU sanctions, Member States must adopt effective, proportionate, and dissuasive measures; however, they still retain a good margin of appreciation in choosing the penalties. Consequently,

individuals who breach economic sanctions are subject to penalties that differ from one Member State to another.

Individuals trading and conducting business with Russia, Russian entities, or the territories covered by sanctions should take adequate precautions to prevent sanctions circumvention and avoid incurring penalties from national authorities.

The first precaution involves knowing the scope, object, and purposes of the sanctions and the approaches to implementation.

The development of this knowledge may be difficult. It becomes crucial if individuals have various contacts in different jurisdictions and need to navigate different sanction systems simultaneously. This is the case for individuals operating across the US and Italy who do business at risk of sanctions.

The following report aims to provide the key elements to become acquainted with sanctions from the US–Italian comparative perspective.

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# I KEY PLAYERS

## Italy

**I.1** Italy applies economic restrictive measures, or sanctions, that are provided for by EU acts. The EU adopts sanctions under Article 215 of the Treaty on the Functioning of the European Union (“TFEU”) that governs the EU Common Foreign and Security Policy (“CFSP”). CFSP aims at safeguarding the Union’s values, maintaining international peace and security as well as consolidating and supporting democracy, the rule of law, and human rights. At the time of this publication, the EU has agreed on seven packages of sanctions and one “maintenance and alignment” package. Moreover, the EU decided to suspend the visa facilitation agreement between the EU and Russia, thereby Russian citizens being obliged to meet the general rules of the visa code to enter the Member States.

**I.2** Basically, acts imposing sanctions are updating measures that the EU adopted in 2014 after the Russian invasion of Crimea, namely: Decision 2014/145/CFSP and Regulation (EU) 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine;<sup>1</sup> Decision 2014/512/CFSP and Regulation (EU) 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine.<sup>2</sup>

**I.3** Sanctions that target Belarus are laid down in Decision 2012/642/CFSP and Council Regulation (EC) 765/2006 concerning restrictive measures in view

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<sup>1</sup> [2014] OJ L 78/6, 16. The latest consolidated versions date 1<sup>st</sup> September 2022.

<sup>2</sup> [2014] OJ L 229/1, 13. The latest consolidated versions date 22 July 2022 for Regulation (EU) 833/2014 and 28 July 2022 for Decision 2014/512/CFSP.

of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine.<sup>3</sup>

**I.4** Sanctions that target the so-called DNR and LNR regions of Ukraine are laid down in Decision (CFSP) 2022/266 and Regulation (EU) 2022/263 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.<sup>4</sup>

**I.5** This report focuses mainly on sanctions concerning Russia and Russian individuals. For the sake of brevity, “individuals” means natural or legal persons or other non-public entities.

**I.6** Taken as a whole, sanctions include targeted **individual measures** (such as asset freezing and travel bans), **sectoral measures** (such as weapons and dual-use embargoes), and **economic and financial measures** (such as import/export restrictions and prohibition to provide specific services).

**I.7** The Member States bear the primary responsibility to implement and enforce sanctions in consistency with their general duty to comply with the EU law. In this respect, each Member State designates its competent authorities whose name, address, and contact are published in the annexes of the relevant EU acts. The enforcement of the sanctions and the application of penalties for the infringement thereof also involve authorities other than those listed in the annexes.

**I.8 Italian authorities** include the Ministry of Foreign Affairs and International Cooperation (which also acts as the National Focal Point on Sanctions); the Ministry of Economy and Finance; *Guardia di Finanza* (Tax Police); the Coast Guard; *Agenzia del Demanio* (State Property Agency), and judicial authorities.

**I.9** National administrative authorities act directly or through sub-agencies or sub-organs to authorize licenses or derogation from the sanctions, or to

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<sup>3</sup> Council Decision 2012/642/CFSP of 15 October 2012 [2012] OJ L285/1; Council Regulation (EC) No 765/2006 of 18 May 2006 [2006] OJ L134/1. The latest consolidated versions date 20 July 2022.

<sup>4</sup> Both Council Decision (CFSP) 2022/266 and Council Regulation (EU) 2022/263 were adopted on 23 February 2022 [2022] OJ 411/77, 109. The latest consolidated versions date 14 April 2022.

impose penalties when the sanctions are breached. Each competence will be illustrated below in Chapters IV, V, VII, and VIII.

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## US

**I.10** The United States applies sanctions through a variety of laws and regulations to enforce US foreign policy and national security interests. Typically, sanctions programs arise from the President of the United States' Executive Orders, congressional statutes, and federal government agency regulations and guidance.

**I.11** The US sanctions programs are administered through key federal government agencies. The main sanctions-related agency, the US Department of Treasury, **Office of Foreign Assets Control** ("OFAC") administers and enforces economic and trade sanctions under different executive orders, statutes, regulations, and guidance. In addition to generally administering and enforcing sanctions, OFAC also maintains several lists of entities and individuals that are subject to certain restrictions like the **Specially Designated Nationals and Blocked Persons List** ("SDN") List and the **Sector Sanctions Identification List** ("SSI") List. OFAC issues **general licenses** that authorize activities falling within certain limitations without the need for an application and OFAC may issue **specific licenses** upon application and review.

**I.12** The US Department of Commerce, **Bureau of Industry and Security** ("BIS") administers and enforces export control and treaty compliance systems. Specifically, BIS maintains the **Export Administration Regulations** ("EAR"). The EAR regulates dual use and commercial items, software, and technology for items "subject to the EAR." BIS maintains several lists of certain entities, individuals, and items subject to varying restrictions including the **Commerce Control List** ("CCL") and **Entity List**. BIS also reviews export license applications.

**I.13** The US Department of State, **Directorate of Defense Trade Controls** ("DDTC") administers and enforces the **International Traffic in Arms**

**Regulations** (“ITAR”) which controls the export of defense and military related articles and services.

**I.14** US Department of Homeland Security, **US Customs and Border Protection** (“CBP”) also works with these federal agencies to administer and enforce import sanctions.

**I.15** Unlike the EU sanctions, the US sanctions programs is spread out amongst a variety of key executive orders, laws, and regulations. Some of the major authorities surrounding the Russian sanctions programs include the International Emergency Economic Powers Act (“IEEPA”); Executive Orders 14024, 14039, 14065, 14066, 14068, and 14071; the EAR, which covers amongst other items, general sanctions against Russia and Belarus (15 C.F.R. § 746.8) and luxury goods sanctions (15 C.F.R. § 746.10); the Russian Harmful Foreign Activities Sanctions Regulations (31 C.F.R. Part 587); and the Ukraine-/Russia-Related Sanctions Regulations (31 C.F.R. Part 589).



# II

## PERSONAL AND TERRITORIAL SCOPE OF SANCTIONS

### Italy

**II.1** EU sanctions apply to any person inside or outside Italian territory (or the EU territory) who is an Italian citizen or national of another Member State; to any legal person, entity or body, inside or outside Italian territory (or the EU territory), which is incorporated or constituted under Italian law or the law of another Member State; to any individual in respect of any business done in whole or in part within Italy or within the EU.

**II.2** Consequently, Italian branches of US companies and US companies whose business is totally or partly conducted in Italy or in another EU Member State are submitted to the EU acts.

**II.3** As regards **measures freezing funds or economic resources**, individuals directly concerned are listed in Annex I of Regulation 269/2014.<sup>5</sup> They include political representatives, oligarchs, military personnel, and propagandists. Italy imposes sanctions on listed individuals who lie within its jurisdiction. The EU Member States cooperate in this respect through the **Freeze and Seize Task Force**. At the international level, cooperation is performed through the **Russian Elites, Proxies, and Oligarchs (REPO) Task Force**.

**II.4** The personal scope of the sanctions may widen due to the **control** or **ownership** that listed or otherwise sanctioned individuals exercise over other individuals. Many sanctions, in fact, also apply to individuals who “act on behalf of or at the direction of”, or “whose proprietary rights are directly or indirectly

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<sup>5</sup> At the time of this publication, the measure is targeting 1206 persons and 108 entities. It has been prorogated until 15 March 2013. A separate freezing measure concerns Syrian individuals that the EU has found involved in the recruitment of mercenaries to fight in Ukraine alongside Russia.

owned for more than 50%” by listed or otherwise directly sanctioned individuals.

**II.5** For instance, Article 5aa of Regulation 833/2014 prohibits “to directly or indirectly engage in any transaction with” individuals that are listed in Annex XIX, or with “a legal person, entity or body that are established outside the EU whose proprietary rights are directly or indirectly owned for more than 50 %” by said listed individuals, or with “a legal person, entity or body acting on behalf or at the direction of” the previous ones.

**II.6** The same regime sometimes exceptionally applies to companies established in third countries. For instance, banks under Italian jurisdiction are prohibited to accept deposits exceeding Euro 100,000 coming from companies “established outside the Union” that are owned, for more than 50%, by Russian nationals or natural persons residing in Russia.<sup>6</sup>

**II.7** Besides, when it comes to freezing assets, if the listed individual is ascertained to have control over non-targeted individuals, the European Commission urges States and operators to presume that the control extends to all assets owned by the latter.<sup>7</sup>

**II.8** Lacking definitions in Regulation 833/2014 and Regulation 269/2014, definitions that are provided by **Regulation 2580/2001** concerning measures to combat terrorism, and the interpretation that the Court of Justice of the European Union (“CJEU”) has furnished on them, are helpful to determine the meaning of “control” and “owning”.<sup>8</sup>

**II.9** It is worth noting that, while the “**owning**” **50 Percent rule** in the Italian system refers to single entities, it is still debated whether the “control” might also refer to joint directions or dominant influences. The EU acts occasionally refer to “joint control”, but only with respect to exemptions or derogations and

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<sup>6</sup> Article 5b (1) of Regulation 833/2014 as amended by Regulation (EU) 2022/1269.

<sup>7</sup> See Commission Opinion of 19 June 2020 on Article 2 of Regulation 269/2014 (C(2020) 4117 final).

<sup>8</sup> Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism [2001] OJ L 344/70. See Article 1 (5)(6).

for the sake of companies incorporated or constituted under the law of a Member State that exercise the control.

**II.10** On the other hand, it should be borne in mind that the concepts of “owning” and “control” within the area of restrictive measures do not have the same meaning as they generally have in company law, where they serve “to ascertain the commercial liability of a company which is legally subject to the control, as regards decision-making, of another commercial entity”.<sup>9</sup>

**II.11** Moreover, “control” or “owning” may lead to applying, along with sanctions and due diligence, the special Italian regime concerning the control of foreign direct investments (“**FDI**”). Depending on the circumstances of the case, this regime entitles the Italian government to exercise the so-called **golden power**<sup>10</sup> as a means to control M&A and other transactions concerning companies that conduct activities in Italian strategic sectors. Closely connected to the impact of sanctions on the control of FDIs is the interplay between sanctions and the protection of FDIs through bilateral or multilateral investment treaties that are still in force between Russia and Italy.

**II.12** In conclusion, Italian companies, Italian branches of US companies, or US companies that directly conduct business in Italy or in other Member States that fall under “control” or “owning” in the foregoing terms are under the duty to comply with measures imposing sanctions or are at risk of being sanctioned.

**II.13** EU sanctions apply in **spaces** where Italy has sovereignty and jurisdiction or where the EU law applies. Consequently, sanctions cover Italian territory, including territorial sea and airspace. They apply on board any aircraft or any vessel under Italian jurisdiction or the jurisdiction of another Member State.

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<sup>9</sup> CJEU, Case C-123/18 P HTTS Hanseatic Trade Trust & Shipping GmbH vs Council of the European Union, European Commission [2019] ECLI:EU:C:2019:694, para 70.

<sup>10</sup> Law Decree 15 March 2012 no. 21 converted in Law 11 May 2012 no. 56 and subsequently amended.

## US

**II.14** US sanctions apply to “**US persons**,” wherever located. A “US person” means any US citizen, lawful permanent resident, entity organized under US law or the law of any jurisdiction within the United States, and any person in the United States.

**II.15** Similar to the EU’s sanctions jurisdiction, US branches of Italian companies or Italian companies conducting business in the United States are subject to US sanctions.

**II.16** Individuals and entities whose assets are blocked by US financial sanctions are identified on the **Specially Designated Nationals and Blocked Persons List** (“SDN List”) maintained by the OFAC. US persons are generally prohibited from dealing with these individuals and entities. Additionally, OFAC maintains the **Sector Sanctions Identification List** (“SSI List”), which identifies persons operating in sectors of the Russian economy with whom certain transactions are prohibited.

**II.17** OFAC’s **50% Rule** also prohibits US persons from dealing with individuals or entities directly or indirectly owned 50% or more in the aggregate by one or more persons on the SDN List. Indirect ownership includes a blocked person’s ownership of shares of an entity through another entity that is 50% or more owned in the aggregate by the blocked person. Unlike in Italy, OFAC’s 50% Rule does not prohibit transactions with individuals or entities controlled by a blocked person (i.e., individuals or entities who “act on behalf of or at the direction of” a blocked person).

**II.18** In addition to the SDN and SSI Lists, the US government also maintains other lists of individuals with whom certain transactions are prohibited. For example:

- The **Foreign Sanctions Evaders List** identifies individuals and entities determined to have violated, attempted to violate, conspired to violate, or caused a violation of US sanctions on Syria or Iran, as well as foreign persons who have facilitated deceptive transactions for or on behalf of persons subject to US Sanctions. US persons may not transact with foreign sanctions evaders.

- The **Denied Persons List** identifies individuals and entities that have been denied export privileges. Any dealings with a party on this list that would violate the terms of its denial order are prohibited.
- The **Entity List** identifies individuals and entities whose presence in a transaction can trigger an additional export license requirement beyond those already outlined in the Export Administration Regulations (“EAR”).<sup>11</sup>
- The **Military End User (“MEU”) List** identifies individuals and entities whose presence in a transaction triggers an additional export license requirement for items listed in Supplement No. 2 to Part 744 of the EAR.
- The **Unverified List** identifies parties whose presence in a transaction is a “red flag” that should be resolved before proceeding.

**II.19** The US government maintains the **Consolidated Screening List (“CSL”)**, which allows users to search all screening lists at one time.

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<sup>11</sup> 15 C.F.R. § 730.1 et seq.

# III FINANCIAL SANCTIONS

## Italy

### III.1 Regulation 833/2014 prohibits, in particular:

- a. **public financing or financial assistance** for trade with, or investment in, Russia;
- b. investment, participation, or otherwise contribution to projects co-financed by the **Russian Direct Investment Fund**;
- c. participation in any legal person, entity, or body incorporated or constituted under the law of Russia or any other third country and operating in the **energy sector** in Russia;
- d. arrangement of new **loans or credits** or other financings to the individuals referred to in point c);
- e. executing contracts resulting from **public procurement** to or with Russian nationals or individuals residing or established in Russia, or entities that they directly or indirectly control for more than 50%;
- f. instituting or administering **trusts** for Russian nationals or individuals residing or established in Russia, or entities that they directly or indirectly control for more than 50%;
- g. **accounting** and other financial or **tax consulting** for the Russian Government and entities established in Russia;
- h. **insurance and reinsurance**, directly or indirectly, in relation to aircraft, spacecraft, and parts thereof;
- i. direct or indirect purchase, selling, **investment services** for or assistance in the issuance of transferable securities and money-market qualified instruments. The prohibition mainly targets legal entities controlled by the Russian Government or its Central Bank, major credit institutions for the competitiveness of Russia in Italy, legal entities controlled by listed individuals for more than 50%, and legal entities likewise sub-controlled;
- j. **credit rating** and any services regarding **financial settlements** for qualified transferable securities to any Russian national or individuals residing or established in Russia;
- k. **financial messaging services** to listed entities or entities that they control for more than 50% (the so-called “SWIFT block”);

- I. **transfer of banknotes or securities** denominated in Euro or other currency of a Member State, **accepting deposits** exceeding Euro 100,000, or providing **crypto-asset wallet, account, or custody services** exceeding Euro 10,000 when it comes to Russian nationals or individuals residing or established in Russia. As noted above, this prohibition also concerns deposits from individuals established in third countries and controlled by Russian nationals or individuals residing or established in Russia. On the other hand, the deposit is accepted, even from Russians or persons residing in Russia, when they are made towards Italians or nationals of other Member States, or members of the European Economic Area or Switzerland, or to natural persons (e.g., US citizens) having residence permit in Italy or other Member States. According to the European Commission, this exception also works in the case of Russian nationals who also have the nationality of one of such countries.<sup>12</sup>

## Derogation

**III.2** A set of derogations make sure that the measures (and their effects) do not go beyond the aim pursued by the EU when packaging the sanctions. Derogations should be separated from transactions not falling under the sanction and, consequently, not requiring licenses or previous authorization to be effective.

**III.3** It may prove fitting to make some examples. For instance, **financing is permitted for non-prohibited imports or exports** of goods and non-financial services between the Union and any third State, including the expenditure for goods and services from another third State that is necessary for executing trade contracts.

**III.4 Loans are permitted** if they aim to provide emergency funding to meet solvency and liquidity criteria for legal persons established in the Union, whose proprietary rights are owned for more than 50 % by listed individuals. Besides, coordination with the exemptions from freezing measures (see below) leads to accepting deposits of funds that are necessary for the basic needs of listed individuals, or humanitarian purposes, or for civil society activities that promote democracy, human rights, or the rule of law in Russia.

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<sup>12</sup> FAQ-Deposits of 8 July 2022.

**III.5 Transactions that were concluded before a specific date** (often corresponding to the date of adoption of the measure or the event that triggered its adoption) are safe for a wind-down period, along with ancillary contracts necessary for their execution. Wind-down periods differ depending on the specific transaction.

**III.6** Recently, the prohibition to enter into any **transactions with Russian public entities** was removed to ensure **access to judicial, administrative, or arbitral proceedings** in a Member State or to request the **recognition or enforcement of a judgment or an arbitral award** rendered in a Member State (upon condition that the transactions are consistent with the objectives of Regulation 833/2014 and Regulation 269/2014).<sup>13</sup> Sanctions concerning the provision of legal services should be generally interpreted in light of the fundamental rights protected under Article 47 of the EU Charter of Fundamental Rights and Article 6 of the European Convention on Human Rights.

**III.7** Notably, the prohibition to provide accounting and other bookkeeping or tax counseling to companies established in Russia was recently removed where the company is owned by, or solely or jointly controlled by, a legal person, entity, or body that is incorporated or constituted under Italian law, or the law of other Member States, members of the European Economic Area, or Switzerland.

**III.8** Most derogations must be **authorized** by national authorities. Authorizations cross occasionally through prohibited and non-prohibited activities, such as authorizations to deposits for non-sanctioned trade.

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<sup>13</sup> This means, inter alia, that arbitration agreements should not be concluded in relation to disputes arising out of the sanctions. Moreover, it remains to be seen what transactions concerning the recognition and the enforcement of judgment or awards exactly are. In any case, such exemptions must be weighed against Article 11 of Regulation 269/2014 and Regulation 833/2014 (see infra Section VIII.8).



## US

**III.9** The US has similar financial sanctions to Italy. For example, the US prohibits:

- new investment in the **Russian energy sector** without a license;
- **new investment** in Russia, which is defined as the commitment of capital or other assets for the purpose of generating returns or appreciation” made on or after April 6, 2022;
- the direct or indirect export, reexport, sale, or supply of any certain categories of services from the United States or by a US person, wherever located to any person in Russia (the “**Services Prohibition**”), including accounting, trust and corporate formation, management consulting, and quantum computing services.
  - **Accounting services** includes services related to the measurement, processing, and evaluation of financial data about economic entities.
  - **Trust and corporate formation services** includes services related to assisting persons in forming or structuring legal persons, such as trusts and corporations; acting or arranging for other persons to act as directors, secretaries, administrative trustees, trust fiduciaries, registered agents, or nominee shareholders of legal persons; providing a registered office, business address, correspondence address, or administrative address for legal persons; and providing administrative services for trusts.
  - **Management consulting services** includes services related to strategic business advice; organizational and systems planning, evaluation, and selection; development or evaluation of marketing programs or implementation; mergers, acquisitions, and organizational structure; staff augmentation and human resources policies and practices; and brand management.
  - **Quantum computing services** includes activities related to products and services in or involving Russia in research, development, manufacturing, assembling, maintenance, repair, sale, or supply of quantum computing, quantum computers,

electronic assemblies thereof, or cryogenic refrigeration systems related to quantum computing.

**III.10** The Services Prohibition does not apply to:

- Services to an entity in Russia directly or indirectly owned or controlled by a US person, or
- Services in connection with winding down or divesting an entity in Russia that is not directly or indirectly owned or controlled by a Russian person.

**III.11** Certain individuals and entities as identified on the SSI List are also subject to “Directives,” which impose further restrictions on activities. For example, the Russian Harmful Foreign Activities Sanctions Directives include:

- Prohibitions on US persons from obtaining Russian sovereign debt from certain individuals and entities are subject to **Directive 1A**;
- Prohibitions on US financial institutions opening or maintaining correspondent accounts or payable-through accounts, or processing transactions involving certain foreign financial institutions subject to **Directive 2**;
- Prohibitions on US persons from acquiring new debt or equity with a maturity date of over 14 days to certain entities (and their subsidiaries) subject to **Directive 3**; and
- Prohibitions on US persons from engaging in transactions with Russia’s Central Bank, National Wealth Fund, and Finance Ministry under **Directive 4**.

**III.12** There are also comprehensive sanctions on the so-called DNR and LNR Regions of Ukraine that prohibit new investment, the direct or indirect import from the regions into the United States; direct or indirect export, reexport, sale, or supply from the United States or by a US person, wherever located, to the regions, and circumvention like approval, financing, facilitation, or guarantee by a US person, wherever located, of any transactions by a non-US person that would otherwise be prohibited if engaged in by a US person.

## **General Licenses (Derogation)**

**III.13** OFAC may authorize transactions under a general or specific license. A general license may authorize some of these prohibited activities under certain circumstances, without the need for a prior application. For example, Russia-related general licenses may authorize certain transactions prohibited under the directives like for certain clearing and settlement transactions; noncommercial, personal remittances; providing services to certain US individuals located in Russia; and winding down transactions. Where a general license does not apply, individuals or entities can apply for a specific license for a particular transaction. Licenses are discussed further below under Section VII, Authorization (US). The general licenses currently in effect can be found on OFAC's Russian Harmful Foreign Activities Sanctions page.

# IV BLOCKING (FREEZING)

## Italy

**IV.1** Regulation 269/2014 states that “all funds and economic resources belonging to, owned, held or controlled by any natural persons or natural or legal persons, entities or bodies associated with them as listed in Annex I shall be frozen” and that “no funds or economic resources shall be made available, directly or indirectly, to or for the benefit of natural persons or natural or legal persons, entities or bodies associated with them listed in Annex I”.

**IV.2** The first part of the provisions refers to **listed individuals** who are directly sanctioned. The second part refers to **individuals under the Italian jurisdiction** or the jurisdiction of the other EU Member States who are prohibited to provide funds and economic resources to listed people and, accordingly, must comply with freezing measures.

**IV.3** “**Funds**” range from cash, claims on money, credit, guarantees, and payment instruments to deposits with financial institutions, bonds, warrants, bills of lading, letters of credits, dividends, or other income on or value accruing from or generated by assets.

**IV.4** “**Economic resources**” include assets of every kind, whether tangible or intangible, movable or immovable, other than “funds” as referred to above, which, however, be used to obtain funds, goods, or services.

**IV.5** Freezing is ordered by decree of the Ministry of Economy and Finance through the Financial Security Committee, which also rules on funds and assets unfreezing. *Guardia di Finanza* (the Italian Tax Police) carries out the freezing enforcement. *Agenzia del Demanio* (the State Property Agency) is responsible for the custody and maintenance of the frozen assets.

**IV.6** The **concept of “freezing”** is so wide to encompass any means preventing the use of funds and economic resources as well as any move or

transfer thereof, or alteration of their volume, amount, location, ownership, possession, character, and destination. This means, for instance, that even provisional and protective measures on a frozen asset might not be issued by courts if the measure were to modify the asset destination.<sup>14</sup>

## Derogation

**IV.7** Derogations are provided, in particular, for the sake of **fundamental rights, essential interests** of the Member States, **humanitarian purposes**, health emergencies, **human health**, and **safety of the environment**.

**IV.8** For instance, funds or economic resources may be unfrozen or otherwise made available if they are necessary for the basic needs of listed individuals and their families,<sup>15</sup> or for payment of professional fees or expenses for legal services, or if they pertain to accounts of bodies enjoying immunities in accordance with international law.

**IV.9** Most exemptions should be authorized by national authorities. Different from the cases of derogation are funds and economic resources not falling under the sanction, and consequently not requiring authorization to be available.

## US

**IV.10** Sanctions “blocking” or “freezing” property are a way of controlling the property. Once a person is added to the SDN List, their property is blocked. Although title to the blocked property remains with the sanctioned person, OFAC must authorize any transfers or dealings related to the property.

**IV.11** Under the Russian Harmful Foreign Activities Sanctions Regulations,<sup>16</sup> once a person is sanctioned under the authority granted by Executive Order

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<sup>14</sup> CJEU, Case C-340/20 Bank Sepah [2021] ECLI:EU:C:2021:903, para 57 ff.

<sup>15</sup> E.g. payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges.

<sup>16</sup> 31 C.F.R. Part 587.

14024, “[a]ll [of the sanctioned person’s] property and interests in property that are in the United States, that . . . come within the United States, or that are or . . . come within the possession or control of any United States person . . . are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in” unless authorized by OFAC. This includes contributing or providing “funds, goods, or services by, to, or for the benefit of” the sanctioned person and receiving “any contribution or provision of funds, goods, or services from” the sanctioned person.

**IV. 12** “Property” and “property interests” are broadly defined to include everything from money, savings accounts, evidence of title, and bills of lading to powers of attorney, accounts payable, patents, trademarks or copyrights, and judgments.<sup>17</sup> It includes sovereign cryptocurrency, virtual (non-fiat) currency, and digital representations of fiat currency.

**IV.13** Like Regulation 269/2014’s reach, the US blocking provision applies to both a sanctioned person’s funds, as well as US persons,<sup>18</sup> wherever located, providing funds, goods, or services to or for the benefit of a sanctioned person.

**IV.14** US financial institutions are required to block accounts or funds transfers involving sanctioned persons. The funds are then placed in interest-bearing accounts; only OFAC can authorize debits of these accounts. The financial institution is also required to report the blocking to OFAC within ten days.

**IV.15** Additionally, the Russia-related sanctions prohibit “[a]ny transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempt to violate” the applicable sanctions.

### **General Licenses (Derogation)**

**IV.16** The Russia-related sanctions regulations outline the following general authorizations:

- Provision of certain legal services to or on behalf of sanctioned persons, as well as receipt of payment for those services;
- Emergency medical services;

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<sup>17</sup> See 31 C.F.R. § 587.311.

<sup>18</sup> See supra Section II.

- Official business of the US government; and
- Official business of certain international organizations like United Nations, the European Bank for Reconstruction and Development, the International Committee of the Red Cross, and the International Federation of Red Cross and Red Crescent Societies.<sup>19</sup>

**IV.17** Additionally, OFAC may issue additional general licenses allowing all US persons to engage in the activities listed in the general license without applying for a specific license. For example, when OFAC may issue a general license authorizing the wind down of transactions involving an entity recently added to the SDN List. The general licenses currently in effect can be found on OFAC's Russian Harmful Foreign Activities Sanctions page.

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<sup>19</sup> 31 C.F.R. §§ 587.506-587.510.

# V

## PROHIBITIONS (TRADE)

### Italy

**V.1** Regulation 833/2014 prohibits to “**sell, supply, transfer or export**”, directly or indirectly, whether or not originating in the Union, to any natural or legal person, entity, or body in Russia or for use in Russia goods and technology:

- for **dual-use** as per Regulation (EU) 2021/821;<sup>20</sup>
- which might **contribute to Russia’s military and technological enhancement**, or the development of the defense and security sector, as well as to its enhancement of industrial capacities (listed in Annexes VII and XXIII);
- suited for use in **oil refining and liquefaction of natural gas** (listed in Annex X);
- suited for use in **aviation**, space industry, or **maritime navigation** (listed in Annexes XI and XVI);
- pertaining to **luxury** (listed in Annex XVIII).

**V.2** As of 22 July 2022, the prohibition also covers **gold** and **jewelry** that originate in Russia or has been exported from Russia into the EU or to third countries.

**V.3** Regulation 833/2014 also prohibits to **import** directly or indirectly from Russia products that generate significant revenues for Russia (listed in Annex XXI, e.g. caviar, mineral, or chemical fertilizers) and those listed in:

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<sup>20</sup> Regulation (EU) 2021/821 of the European Parliament and of the Council of 20 May 2021 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items (recast) [2021] OJ L 206/1.



- Annex II (such as line pipe of a kind used for **oil or gas pipelines**; for this kind of goods the prohibition also covers the Exclusive Economic Zone and the Continental Shelf of Russia),
- Annex XVII (**iron and steel products**),
- Annex XXII (**coal and other solid fossil fuels**).

**V.4** Import/export of crude oil or petroleum products listed in Annex XXV is prohibited.

**V.5** With respect to such goods and technology and to any natural or legal person, entity, or body in Russia or for use in Russia, the **prohibition extends** to technical **assistance, brokering** services, or other services, **manufacture, maintenance, use, financing** or **financial assistance**. Besides, the prohibition applies to assistance in activities related to the transport to third countries of crude oil or petroleum products originating in Russia or exported therefrom as listed in Annex XXV.

**V.6 Individuals** under prohibition **are required to carefully assess** whether their business falls under the abovementioned prohibited categories or within the Annexes. For instance, goods that do not look like a luxury—such as electronic items for domestic use—may be nonetheless listed in Annex XVIII. Moreover, goods and technologies may be dragged in the “catch-all rule” of the Regulation on dual-use notwithstanding not being listed therein. In this respect, it is essential for individuals to verify if the CN code and the name of the good or technology associated with their business are present in the Annexes.

**V.7** International trade is also affected by the prohibition for vessels registered under the flag of Russia to **access Italian ports and locks**,<sup>21</sup> and for any Russian road transport enterprise to **transport goods by road** within Italy and the EU territory.

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<sup>21</sup> Vessels that have changed their Russian flag or their registration, to the flag or register of any other State after 24 February 2022 fall under sanctions except in special cases. The notion of “vessel” rests on relevant international conventions of maritime law. Regulation (EU) 833/2014 also includes yachts and qualified recreational crafts or personal watercrafts. Access to locks is banned after 29 July 2022 and does not apply if the vessel is to leave Italy.

**V.8** Competence to control exports, transfer, brokerage, and transit of dual-use goods and technology lies with the Ministry of Foreign Affairs and International Cooperation which acts through the Unit for the Authorization of Armament Materials.

**V.9** The Italian Coast Guard oversees the block of ports (and presumably locks).

### **Derogation**

**V.10** As with financial prohibitions, a set of derogations is provided for the measures (and their effects) not to go beyond the aim pursued by the EU when packaging the sanctions. Particularly, also derogations to trade prohibitions are designed to protect the fundamental rights of the listed subjects, essential interests of the Member States (starting with critical energy supply), humanitarian purposes, health emergencies, human health, and safety of the environment. Recently, the EU declared that its sanctions should not “impact food and energy security of **third countries** around the globe, in particular of the **least developed ones**”<sup>22</sup>. This means that certain goods listed in Annex XVII, XXI and XXII of Regulation 833/2014 (such as **fertilizers, animal feed, and coal**) may be transferred to third countries, along with financing or financial assistance related to such transfer, when it comes to goods that originate in Russia or are exported from Russia by EU operators or via the EU territory (including in transit).

**V.11** Moreover, contracts that were concluded before a date (often corresponding to the date of adoption of the measure or the event that triggered its adoption) are generally safe for a wind-down period, along with ancillary contracts necessary for their execution. The wind-down period differs depending on goods, services or technologies provided.

**V.12** Most exemptions should be authorized by or at least notified to national authorities. As noted above, the cases of derogation differ from those concerning contracts that do not fall under the sanction and, consequently, do not require previous authorization to be executed. Traders generally must declare in their **customs declaration** that the items fall under exceptions.

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<sup>22</sup> FAQ-Import, purchase & transfer of listed goods 19 September 2022.

## US

**V.13** For trade prohibitions, both the US and EU maintain a list of products that cannot be exported to Russia without government authorization. Those products include physical commodities (e.g., equipment, materials, systems), as well as technology and software, which can include things like information manuals, designs, and procedure needed to develop, use, produce, install, maintain, or refurbish export-controlled commodities. These dual-use items are regulated under the EAR. Items subject to certain license requirements are generally listed within the EAR on the CCL.

**V.14** Consumer products (which are not on the CCL and are classified as EAR99) are not generally subject to export controls for Russia with the exception of certain **fish and seafood products, crude oil, petroleum products, liquefied natural gas, coal, diamonds, gold, and luxury goods** (e.g., tobacco products, alcohol, watches, leathers and furs, certain high-end clothing, and artwork). However, some consumer items may be subject to export controls based on the end user or end use.

**V.15** Items may be subject to license requirements under the Russia Foreign Direct Product Rule which establishes control over foreign-produced items that are (i) “the direct product of certain US-origin software or technology subject to the EAR; or (ii) produced by certain plants or major components thereof which are themselves the direct product of certain US-origin software or technology subject to the EAR.”

**V.16** There is also a Foreign Direct Product Rules for Russian military end users which applies to foreign-produced items that are: “(i) the direct product of any software or technology subject to the EAR that is on the CCL; or (ii) produced by certain plants or major components thereof which are themselves the direct product of any US-origin software or technology on the CCL.” Items meeting either (i) or (ii) are subject to the EAR and require a license if an entity on the Entity List with a footnote 3 designation is a party to the transaction, or if there is knowledge the item will be incorporated into or used in the production

or development of any part, component, or equipment produced, purchased, or ordered by an entity with a footnote 3 designation on the Entity List.

**V.17** Certain partner countries are excluded from the Russian Foreign Direct Product rules.

**V.18** Items requiring an export license application for exports, reexports, or transfers (in-country) to Russia are reviewed under a policy of denial. BIS will review license applications on a case-by-case basis for reasons such as safety of flight, maritime safety, humanitarian needs, government space cooperation, civil telecommunications infrastructure, government-to-government activities, and to support partner country companies in Russia.

**V.19** BIS has also restricted the use of EAR license exceptions for Russia export, reexports, and transfers (in-country).

**V.20 US export controls follow an item throughout the global supply chain, even after the item leaves the United States.** Even when a specific item is not otherwise export controlled, it can require a government license if the recipient is identified as a **military end user**, the product will have a **military end use**, or the party receiving the product is subject to a specific export restriction. Because export controls can apply extraterritorially, companies have to consider where and to whom the product will ultimately be delivered to comply with the applicable restrictions

**V.21** There are also bans on Russian aircraft from entering and using US airspace and Russian-affiliated vessels from entering US ports.

### **General Licenses (Derogations)**

**V.22** As under other sanctions areas, OFAC may authorize transactions under a general or specific license. General licenses may authorize some of these prohibited activities under certain circumstances, without the need for a prior application. Where a general license does not apply, individuals or entities can apply for a specific license for a particular transaction. In some export, reexport, or transfer (in-country) transactions, BIS may also need to authorize a transaction through either an applicable license exemption or its review of a license application. Licenses are discussed further below under Section VII, Authorization (US).

# VI

## SECONDARY SANCTIONS

### Italy

**VI.1** Secondary sanctions would be conceived of as designed to target individuals **outside Italian jurisdiction** or the jurisdiction of other EU Member States with the aim to avoid the circumvention of primary sanctions. **Italy does not apply secondary sanctions.** However, it should be recollected the aforementioned exception concerning measures that prohibit transactions with companies established in third countries that are “controlled” or “owned” by Russian nationals or persons residing in Russia.

**VI.2** On the other hand, Italian and EU economic operators are “advised” to take adequate **due diligence** in order to prevent circumvention of primary sanctions through exports to third countries from which concerned goods may be diverted towards sanctioned countries, or through imports from third countries from which prohibited goods may be diverted to the EU territory.<sup>23</sup>

**VI.3** Due diligence mainly consists in introducing in trade contracts specific provisions that ensure that goods are not targeted by restrictions. Contracting parties may include a statement whereby compliance with said provisions accounts for an essential element of the contracts. Alternatively, they may insert a clause compelling the importer in third countries not to divert the goods to Russia or Belarus or the DNR and LNR regions of Ukraine covered by sanctions. Parties should be informed that the infringement of said clause gives rise to liability.

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<sup>23</sup> See European Commission, Notice to economic operators, importers and exporters [2022] OJ C 145 I/1.

## US

**VI.4** Unlike Italy, **the US uses secondary sanctions** to supplement its existing sanctions programs by targeting persons outside the US's legal jurisdiction. Usually, secondary sanctions target foreign financial institutions and sanctions evaders who do business with persons and entities on the SDN List or are in a business undermining a current sanctions regime. Secondary sanctions can range from targeted restrictions to placement on the SDN List.

**VI.5** Non-US companies should adequately assess potential risks related to transactions with parties or in industries sanctioned by the US that are not correspondingly sanctioned by the company's home jurisdiction.

# VII AUTHORIZATIONS

## Italy

**VII.1** Authorizations relating to banking and financial transactions are issued by the Ministry of Economy and Finance through the Financial Security Committee.

**VII.2** Authorizations relating to export and import are issued by the Ministry of Foreign Affairs and International Cooperation through the Unit for the Authorization of Armament Materials. The same Unit receives the notifications of exempted transactions.

**VII.3** Member States inform each other, and the European Commission, of any authorization granted.

**VII.4** Denial of authorization may be appealed to the administrative judge.

## US

**VII.5** In the United States, US persons can obtain authorizations for certain transactions prohibited under OFAC's regulations by either general license or specific license and for certain exports, re-exports, or transfer (in-country) from BIS by applying for an export license.

**VII.6** Where OFAC administers and enforces the sanctions program, OFAC grants authorization for a transaction that would otherwise be prohibited through a license. There are two types of licenses: general licenses and specific licenses.

**VII.7** General Licenses authorize certain transactions of a particular nature for a class of persons without the need to apply for a license (e.g., humanitarian

aid, COVID-19 related-transactions, energy transaction, maintenance, or winding down operations). General licenses are specific to each sanctions program and cannot be used if the transaction involves a person or entity subject to full blocking sanctions (i.e., an SDN). The general licenses currently in effect can be found on OFAC's Russian Harmful Foreign Activities Sanctions page.

**VII.8** Specific Licenses authorize a particular person or entity to engage in a particular transaction. Entities or individuals may apply for a specific license by submitting a written license application to OFAC. OFAC reviews each specific license application on a case-by-case basis. However, in certain cases where US national security interests are more at risk, the application may be reviewed under a presumption of denial.

**VII.9** Any person engaging in transactions subject to a general or specific license must ensure all license conditions are strictly observed.

**VII.10** Where BIS administers and enforces the export controls related to a particular transaction, BIS will review license applications through its system called SNAP-R. BIS generally reviews license applications on a case-by-case basis, but for certain items, users, or countries, BIS will apply a presumption of denial. There are some license exceptions that may be available for exports such as for certain government activities, technology and software, baggage aircraft, vessels, and spacecraft; encryption items; consumer communication devices, among others.



# VIII

## PENALTIES

### Italy

**VIII.1** The EU Regulations imposing sanctions require the EU Member States to provide penalties for the breach of sanctions. The EU law does not establish the nature (criminal or administrative) of the penalties. It only requires that penalties be “**effective, proportionate and dissuasive**” in order to properly implement the EU measures.

**VIII.2** Regulation 833/2014 paves the way for criminal penalties that the Member States may adopt. It also urges Member states to provide for confiscations of the proceeds resulting from the sanctions. A legislative process to criminalize the violation of EU restrictive measures started on 25 May 2022.

**VIII.3** On the other hand, the EU acts exclude liability, and then penalties, if individuals prove not to know or to have reasonable cause to suspect that they were engaged in a prohibited activity.

**VIII.4** Italian penalty system varies depending on the specific sanction. **Legislative Decree 22 June 2007 no. 109** applies to blocking and freezing. It sets forth measures in matters of terrorism with respect to which “freezing” as an “international sanction” was inaugurated. **Legislative Decree 15 December 2017 no. 221** applies to prohibitions of trade and financial transactions. It was adopted in relation to dual-use items and embargoes.

**VIII.5** Under Legislative Decree 109/2007, infringements of blocking and freezing measures lead to **administrative pecuniary penalties**, unless the fact represents a more serious crime. Reiterated infringements from the same person may lead to publishing the penalty on the Ministry website. Minor sanctions target those who detain funds or other economic resources (e.g. banks) for failing to communicate the freezing implementation. These

administrative sanctions are issued by decree of the Ministry of Economy and Finance.

**VIII.6** Under Legislative Decree 221/2017, infringements of prohibitions of trade and financial transactions lead to penalties that **range from pecuniary fines to imprisonment**. Under certain circumstances, the same Decree provides for asset confiscation. Administrative pecuniary penalties apply to the infringements of the duties of communication.

**VIII.7** Both regimes should be coordinated with general or special criminal provisions in the case the infringement of the EU sanctions entails the commission of other criminal offenses.

**VIII.8** A debated topic concerns the **remedies against sanctions and penalties**. As regards sanctions, the first question is whether listed individuals may bring actions for the **damages resulting from the sanctions**. The answer is in the negative. According to Article 11 of Regulation 269/2014 and Regulation 833/2014 “no claims in connection with any contract or transaction the performance of which has been affected, directly or indirectly, in whole or in part, by the [sanctions], including claims for indemnity or any other claim of this type, such as a claim for compensation or a claim under a guarantee, notably a claim for extension or payment of a bond, guarantee or indemnity, particularly a financial guarantee or financial indemnity, of whatever form, shall be satisfied, if they are made by”: a) listed individuals, b) individuals controlled for more than 50% by listed individuals, c) any Russian individuals, or whatsoever individuals who act on behalf of individuals referred to in a) and b). This rule does not prevent the same individuals from challenging the legality of the non-performance of contractual obligations in accordance with the same Regulations.

**VIII.9** The second question is whether listed individuals may apply for **being delisted**. The answer is in the affirmative. Interested individuals may bring an action before the General Court of the European Union, and appeal to the Court of Justice of the European Union.

**VIII.10 Remedies against freezing measures** issued by the Financial Security Committee are not well regulated because the measure is merely ‘notified’ to the interested person. In other words, while the penalty is embodied in an administrative act (the “decree” of the Ministry of Economy and Finance),

the freezing enforcement is merely “notified” to the interested person. This does not come as a surprise—even though it might raise criticism—because freezing measures under Regulation 269/2014 represent “smart sanctions” that may be enacted without in-depth assessments or adversarial proceedings.

**VIII.11** It is argued that the “mere notification” always accounts for an administrative act that imposes a sanction affecting individual rights. Therefore, it may be challenged before civil courts. Others argue that it would fall under Article 135 1(m) of the Italian Code of Administrative Process whereby any dispute concerning measures set out in Decree 109/2007 (i.e. freezing measures) should be brought before the Administrative Tribunal of Lazio in Rome.

**VIII.12** On the other hand, the **remedies against penalties** for breach of the freezing measures lie with the competence of the Tribunal of Rome (Article 14, Decree 109/2007).

**VIII.13** The **remedies against penalties** for violation of trade and financial sanctions are those established under Italian procedural (administrative, civil, or criminal) law in consistency with the nature of each penalty imposed.

## US

**VIII.14** Violations of US sanctions and export controls can result in both civil and criminal penalties. Civil penalties for both can be up to the greater of \$330,947 or twice the transaction value. Additionally, export control violations can result in the denial of export privileges and the exclusion of practice before BIS.

**VIII.15** Criminal penalties for willful violations of US sanctions, willful attempts, or willful conspiracies, as well as export control violations, can include imprisonment for up to twenty years, a fine of up to \$1 million, or both.

**VIII.16** Similar to the Italian process, persons or entities added to the SDN List may petition OFAC to be delisted. As part of their written submission to OFAC, the sanctioned person “may propose remedial steps . . . , such as corporate reorganization, resignation of persons from positions in a blocked entity, or

similar steps, which the person believes would negate the basis for designation.” After reviewing the delisting petition, OFAC issues a written decision. If the person is delisted, OFAC then removes their name from the SDN List.

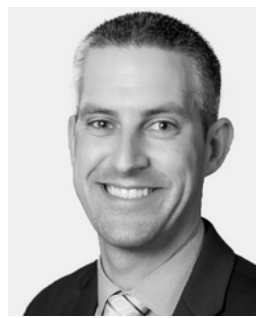
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