

March 31, 2022

Latest Updates to UK and EU Sanctions Related to Russia and Belarus

This Alert summarizes actions taken in the United Kingdom and the European Union since our Alert dated March 16, published [here](#). In particular, the United Kingdom has implemented additional asset freezes, issued further general licenses, and updated the Office of Financial Sanctions Implementation's ("OFSI") General Guidance for Financial Sanctions (the "OFSI General Guidance") to clarify OFSI's position on aggregation of ownership by designated persons. While the European Union has not issued additional sanctions since our last update, it has been busy producing guidance in the form of frequently asked questions ("FAQs") on the new Russian and Belarusian sanctions. This includes an FAQ related to aggregation that diverges from the UK position.

For our latest update as of March 24 on U.S. Sanctions, see our Alert [here](#).

United Kingdom

Additional Persons and Entities Subject to an Asset Freeze

On March 24, the United Kingdom blocked a further thirty-three (33) [Russian individuals and twenty-six \(26\) Russian entities](#), as well as six (6) [Belarusian entities](#).¹ Notably, the additional designations included oil tycoon Eugene Shvidler (who is reported to have close ties to Roman Abramovich, previously blocked by the United Kingdom on March 10);² Herman Gref, CEO of Sberbank; and Polina Kovaleva, the daughter of Russian Foreign Minister Sergei Lavrov.

The foregoing designations also included companies operating in key industries, including the state-owned Russian Railways; drone manufacturer Kronshtadt; Alrosa, the world's largest diamond producer; and Sovcomflot, Russia's largest shipping company.

Importantly for individuals and entities seeking to make or receive payments with counterparties or affiliates in the region, the United Kingdom imposed asset freezes on the following additional Russian financial institutions:

- Alfa Bank;³
- Gazprombank;
- Rosselkhozbank (Russian Agricultural Bank);⁴
- SMP Bank; and
- Ural Bank for Reconstruction and Development.

The United Kingdom also imposed asset freeze sanctions against state-owned Belarusian bank, Bank Dabrabyt.

On March 30, the United Kingdom [announced](#) that it would prohibit maintenance on aircraft or ships belonging to specific sanctioned Russian oligarchs or their businesses.

On March 31, the United Kingdom added (17) entries to the asset freeze list, including [\(12\) individuals associated with the Russian media and military](#); [\(2\) Russian media organizations](#), Rossiya Segodnya and TV-Novosti; and [Photon PRO LLP, Majory LLP, and Djeco Group LP](#).

General Licenses

In connection with the new designations, the United Kingdom issued four general licenses:

- On March 24, OFSI issued a [general license](#) permitting the wind-down of any transactions to which it is a party involving Alfa Bank JSC, GazpromBank, Rosselkhozbank, SMP Bank and Ural Bank for Reconstruction and Development (and, in each case, any subsidiaries thereof), including the closing out of any positions, and any activity reasonably necessary to effect this. This license will expire on April 23, 2022.
- Also on March 24, OFSI issued a [general license](#) permitting the wind-down of any transactions to which it is a party involving Bank Dabrabyt, including the closing out of any positions and any activity reasonably necessary to effect this. The license also expires on April 23, 2022.
- On March 25, OFSI issued a [general license](#) in relation to the designation of Russian Railways. The license allows for the continuation of business operations involving the joint venture GEFCO (a joint venture owned by Russian Railways and Stellantis) and its subsidiaries. It permits payments to or from GEFCO or its Subsidiaries under any obligations or contracts, as well as payments to or from any third party necessary to the continuation of any obligations or contracts. This license expires on May 23, 2022.
- On March 29, OFSI issued a [general license](#) allowing for wind-down of any transactions to which it is a party involving Sovcomflot or its subsidiaries, including the closing out of any positions and any activity reasonably necessary to effect this. The license expires May 15, 2022.

New Guidance on the Aggregation of Ownership

UK sanctions require application of asset freeze sanctions not only to designated persons, but also to entities that are owned 50% or more or controlled by designated persons. In light of the significant number of Russian individual designations, the question has arisen how to treat entities in which multiple designated persons have an ownership interest.

On March 22, OFSI updated the [OFSI General Guidance](#) to clarify—among other things—that it would not automatically aggregate ownership of multiple designated persons. Critically, this contrasts to the U.S. approach under the Office of Foreign Asset Control’s “50% Rule.” Instead, OFSI says that if each of the designated person’s holdings is less than 50% and there is no evidence of a “joint arrangement” or that the shares are held jointly, the company would not need to be treated as owned by designated persons (and subject to asset freeze sanctions). The OFSI General Guidance continues, however, to point out that the “control” prong may still apply. For example, if it was “reasonable to expect” that a designated person could “in significant respects [] ensure that the affairs of a company are conducted in accordance with their wishes,” then an entity may still need to be treated as subject to asset freeze sanctions.

OFSI also updated its [Russia guidance](#) to reflect extending the financial restrictions in place to all non-government-controlled Ukrainian Territory.

European Union

The European Union has not announced any further sanctions since March 15, 2022. Instead, the European Council emerged from meetings on March 24 and 25 releasing a [statement](#) that the European Union has “so far adopted significant sanctions that are having a massive impact on Russia and Belarus.” However, the European Council stated that it “remains ready to close loopholes and target actual and possible circumvention,” calling on countries to align with EU sanctions, warning “[a]ny attempts to circumvent sanctions or to aid Russia by other means must be stopped.” The Council stated that it would be ready “to move quickly with further coordinated robust sanctions on Russia and Belarus” to further “thwart Russian abilities to continue the aggression.”

Meanwhile, the European Commission has published a significant list of [FAQs](#) in relation to the Russian sanctions regime. Moreover, those who have been eagerly awaiting a consolidated version of the EU sanctions regulations can find it [here](#).

Although the European Commission has issued guidance before, the detail and scope of the FAQs significantly exceeds any previously-issued guidance. They cover jurisdictional scope, trade, import and customs-related questions, sanctions particularly affecting banks and payments, and of particular interest, set out the European Union's view on aggregation of ownership as well as on circumvention and expectations for due diligence to ensure EU operators comply with the sanctions.

Aggregation of Ownership by Designated Persons

In contrast to the UK position, and consistent with the U.S. position, the European Union has stated that where multiple designated persons together own 50% or more of an entity, it should be treated as owned *in the aggregate* by designated persons, and subject to asset freeze sanctions. For example, if one listed person owns 30% of the company and another listed person owns 25% of the company, the company should be considered as jointly owned and controlled by listed persons. The FAQ continues, however, to conclude that “dealing with the company could then be considered as making funds or economic resources indirectly available to the listed persons.” Although not stated in response to this FAQ, this may mean that the EU would still permit an EU operator to rebut the presumption that funds are being made available to the listed person.⁵

Jurisdiction and Circumvention

EU sanctions generally provide for a separate offence for “circumvention,” defined as participating, knowingly and intentionally, in activities the object or effect of which is to circumvent prohibitions in the sanctions.⁶ As the EU FAQs confirm, EU sanctions do not apply extra-territorially, and, where EU parent companies have subsidiaries in Russia incorporated under Russian law, they “are not bound by the [EU sanctions] measures.” However, “it is prohibited for EU parent companies to use their Russian subsidiaries to circumvent the obligations that apply to the EU parent, for instance, by delegating to them decisions which run counter to the sanctions, or by approving such decisions by the Russian subsidiary.”

Further guidance on circumvention and the application of EU jurisdiction to EU persons can be [found in FAQs](#) related to some of the export control restrictions: “EU nationals working for that subsidiary are personally bound by EU sanctions and can be held personally liable for participating in transactions which breach EU sanctions. For example, even if the subsidiary itself entered the transaction, EU nationals facilitating the transaction could still be covered by the anti-circumvention clause if they ‘participate in activities’ the object or effect of which was to circumvent the main prohibition. In addition, decisions taken by the foreign subsidiary that need to be cleared/green-lighted by the EU parent company would be relevant, in that the latter is bound in respect of its own actions.”

Due Diligence

The FAQs state that it is a “due diligence duty” to assess the beneficial ownership of a business counterparty. However, what constitutes appropriate due diligence will depend on the specific business and related risk exposure. The FAQs state that it is “ultimately for each operator to develop, implement and routinely update an EU sanctions compliance program reflecting their own individual business and related risk assessment.”

In addition, EU operators should seek to ensure, through their due diligence, that any non-EU entities that it deals with are not being used to evade the sanctions, for example, acting on behalf of sanctioned beneficial owners.

In terms of export controls, the [EU FAQs](#) state that, if a covered item is exported from the EU to a third country and then re-exported to Russia, national competent authorities “may consider the EU exporter’s failure to conduct adequate due diligence as a breach of the Sanctions Regulation. If the EU exporter knowingly and intentionally fails to conduct such due diligence, this can be considered as participation in a circumvention scheme.”

1. The newly designated Belarusian entities are Bank Dabrabyt JSC, CJSC Belbizneslizing, Industrial-Commercial Private Unitary Enterprise Minotor-Service, JSC Transaviaexport Airlines, LLC Belinvest Engineering, and OJSC KB Radar-Managing Company Holding Radar System.
2. However, on March 25, the United Kingdom [amended](#) its March 24 designations to remove travel sanctions on the private or chartered aircrafts and vessels of two individuals, Eugene Shvidler and Oleg Yurievich Tinkov.
3. Alfa Bank was initially listed under sectoral (capital markets) restrictions on February 24, 2022.
4. Gazprombank and Russian Agricultural Bank have been subject to sectoral (capital markets) restrictions since 2014, as well as amended sectoral sanctions imposed on February 24, 2022.
5. See [Commission Opinion of 8.6.2021](#) on the rebuttable presumption of making funds available to a listed person by virtue of ownership/control.
6. See, e.g., Article 12, [Regulation 833/2014](#).