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EU's 11th Sanctions Package Cracks Down on Sanctions Circumvention

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On 23 June 2023, the European Commission adopted its 11th package of sanctions targeting Russia and Belarus. The new package focuses on tackling the circumvention of trade sanctions through third countries and increasing the number of items subject to the European Union transit ban. The package also includes expansion of restrictions on the sale and export of certain goods and technology, as well as targeted sanctions against individuals and entities. Below we set out the key measures of the package.

Combatting sanctions circumvention

One critical element of this sanctions package is the introduction of a new anti-circumvention mechanism. The EU has identified that several prohibited goods are still being sold to Russia via certain third countries, undermining the effectiveness of the prohibitions and sanctions in place. In response to this ongoing issue, the EU has taken significant steps to introduce for the first time this anti-circumvention tool.

The tool enables EU Member States to restrict the sale, supply, transfer or export of specified sanctioned goods and technology to certain specified third countries to be listed in a new annex to Regulation 833/2014. It also prohibits the provision of technical assistance, financial assistance and brokering services related to the listed goods, as well as the sale, licence or transfer of intellectual property rights or trade secrets relating to goods being sold to those countries.

The mechanism only applies to sensitive dual-use goods and technology – or goods and technology that might contribute to the enhancement of Russia's military, technological or industrial capacities or to the development of Russia's defence and security sector – which will be specified by the European Council. These items must present a **high and continuous risk** of being sold, supplied, transferred or exported from third countries to Russia via the EU.

The third countries targeted by the mechanism have not yet been named but will be those identified by the European Council as having **systematically and persistently failed** to prevent the sale, supply, transfer or export to Russia of goods and technology exported from the EU. The decision will be based on a technical analysis by the European Commission on the circumvention issues in question – including available trade data demonstrating that the alternative measures taken have been ineffective – and information about efforts carried out by the EU to address the matter with the third country that have been unsuccessful. The EU will be required to seek the views of the government of the third country on the technical analysis and the intended remedial action. The European Council will then only be able to adopt a decision after the final outreach to the third country has concluded.

However, there is no clarification regarding what is meant by 'high and continuous risk' or 'systematically and persistently failed to prevent', so it remains to be seen how the mechanism will operate and be interpreted in practice.

The package also strengthens the anti-circumvention provisions in relation to individuals and entities subject to an asset freeze and travel ban. The package includes a requirement for the competent authorities of EU Member States to process and exchange information without delay, particularly when they detect instances of a breach or circumvention – or attempts at a breach or circumvention of sanctions.

Sharpening existing tools

Transit ban

The EU has extended its transit ban to include goods and technology that might contribute to Russia's military and technological enhancement or to the development of its defence and security sector, goods and technology for use in aviation or the space industry, and jet fuel and fuel additives. This ban seeks to prevent such goods and technology from being transported from the EU via Russia to third countries.

Import-export controls and restrictions

The package adds 87 entities to the list of entities that are military end-users, form part of Russia's military-industrial complex, or that have commercial or other links with or otherwise support Russia's defence and security sector. These entities are targeted end-users to which deliveries of dual-use goods and technology – and goods and technology that might contribute to Russia's military and technological enhancement – may not be authorised by the competent authorities under the relevant derogations. A total of 585 entities are now covered by the restrictions, with the list covering entities registered in Hong Kong, Uzbekistan, the United Arab Emirates, Iran, Syria and Armenia.

The package also expands the list of restricted items considered to contribute to Russia's technological and military enhancement, or to the development of its defence and security sector, which are prohibited from being sold, supplied, transferred or exported to persons or entities in Russia or for use in Russia, to include:

- Electronic components.
- Semiconductor materials.
- Manufacturing and testing equipment for electronic integrated circuits and printed circuit boards.
- Precursors to energetic materials and precursors to chemical weapons.
- Optical components.
- Navigational instruments.
- Metals used in the defence sector and marine equipment.

Broadcasting

The European Council has extended the suspension of broadcasting licences by five additional media outlets: RT Balkan, Oriental Review, Tsargrad, New Eastern Outlook and Katehon.

Roads and ports

The package extends the prohibition to transport goods into the EU by road to trailers and semi-trailers registered in Russia, including when hauled by trucks registered outside of Russia. In addition, vessels that engage in ship-to-ship transfers where the Member State's competent authority has reasonable cause to suspect that the vessel is in breach of the Russian oil import ban or G7 coalition price cap will be prohibited from accessing EU ports and locks. Any vessel suspected of illegally interfering with, switching off or otherwise disabling its shipborne automatic identification system at any point when transporting Russian oil also will be prohibited from accessing EU ports or locks.

Intellectual property rights

There is now a ban on selling, licensing or transferring intellectual property rights and trade secrets to entities or persons in Russia or for use in Russia, where they are related to:

- Dual-use goods and technology.
- Goods and technology that might contribute to Russia's military and technological enhancement, or to the development of the defence and security sector.
- Firearms and their components.
- Items relating to oil pipelines and related equipment.
- Goods and technology used in oil refining and liquefaction of natural gas.
- Goods and technology for use in aviation or the space industry.
- Maritime navigation goods and technology.
- Luxury goods.
- Goods that could contribute, in particular, to the enhancement of Russian industrial capacities.

The intended aim of this provision is to prevent the sanctioned goods from being manufactured outside the EU and provided to Russia.

Energy

The package ends the temporary derogation previously granted to Germany and Poland for the supply of crude oil from Russia through the northern section of the Druzhba oil pipeline.

Other measures

The existing ban on the export of luxury cars has been extended to include all new and secondhand cars with an engine size above 1,900 cubic centimetres, as well as all electric and hybrid vehicles. Importers also now are required to provide evidence of the country of origin of iron and steel inputs used for processing of iron and steel products in a third country to ensure that such items imported to the EU from third countries do not incorporate inputs from Russia.

Individual listings: travel ban and asset freeze

The EU has sanctioned a further 71 individuals and 33 entities, bringing the totals to 1,572 and 244, respectively. The additions include – amongst others – senior Russian decision-makers, businesspersons, Russian IT companies providing critical technology and software to Russian intelligence, and banks operating in the occupied territories (MRB Bank and CMR Bank). The individuals face a travel ban and an asset freeze in the EU.

If you have any questions, please contact the Cooley authors listed below, who can advise you on the applicable sanctions and how they affect you and your business.

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