



## « INFORMATIVE NOTE: The impact of sanctions adopted for the war against Ukraine and the expected increase in arbitrations»



The United States and the European Union have imposed important sanctions on Russia from a numerical and business standpoint which, precisely because of their number and complexity, pose a challenge to all companies whose activities may be directly or indirectly targeted by these sanctions.

In this brief note an overview of the sanctions in place to date, their potential impact on the business of companies and some guidance in relation to the management and resolution of disputes arising from the imposition of such sanctions will be provided.

The sanctions imposed on Russia affect not only Russian citizens and companies, but also more than 4,000 companies and their operations in all markets, which are already affected by the health pandemic.

In particular, the EU has imposed sanctions on personalities (politicians, oligarchs, propagandists, military, businessmen) and transactions with at least twelve state-owned companies have been banned. Sanctions have been imposed on the Russian energy sector, including a ban on selling oil refining equipment to Russia, importing Russian oil (with exceptions), or investing in the Russian energy

sector, and restrictions on exports to the energy industry. Similarly in the financial sector, investment transactions in Russian entities have been banned, access to the EU market for Russian entities has been restricted, accepting deposits of more than 100,000 euros from Russian citizens, supplying euro banknotes to Russia has been banned, access to the SWIFT system of a number of Russian banks has been restricted, investment in Russian Direct Investment Fund projects and the provision of credit rating services has been banned. Trade has also been targeted by EU sanctions, restricting business with Donetsk and Lugansk, the import of steel products from Russia, prohibiting the export of luxury goods to Russia and the provision of accounting, public relations and consultancy services.

Russia's military sector has also been targeted by the sanctions. The aim is to block arms trade with the country, to stop the export of dual-use equipment, that is to say, technologies that have civilian use but are also useful to an army. This includes items such as radars or geolocation devices.

The EU has adopted transport measures by banning exports of aerospace equipment and shipbuilding



technology to Russia and closing European airspace to Russian aircraft.

Finally, the EU has limited diplomatic visas and banned Russian media from broadcasting in the EU.

This decalogue of European sanctions, together with the rest of the international sanctions (applied by countries such as the United States or the United Kingdom), represent a complex regulatory framework that constitutes a challenge for companies that have to apply and adapt their business in accordance with these sanctions.

The main challenge for companies also lies in the impact that sanctions will have on exports of products whose classification for the purpose of determining whether they fall within the scope of sanctions restrictions is not always straightforward.

Experts agree that companies will require a team of specialists capable of navigating and interpreting the complex regulatory framework and that company management must anticipate those areas that will cease to produce income for the company following the sanctions in order to discard them and promote those that continue to generate profits. This will only be possible through constant updating of information and sustained work by the team and the company's directors, who must give clear guidelines. Internal training for business managers, who often do not have a legal background, should also be ensured.

In the same vein, internal communication within companies will have to be strengthened to ensure

the coherence of contracts. Likewise, companies will have to implement internal and external control systems that will enable them, if necessary, to prove compliance with international regulations on the sanctions in question.

There is no doubt that international arbitration will play a key role in the resolution of disputes arising from these sanctions, as it cannot be ignored that many companies have been forced to suspend or terminate contracts with their counterparts in Russia.

In many of these arbitrations, depending on the applicable law, the dispute will revolve around the force majeure defence, which could include non-performance due to the imposition of penalties. The content and scope of the force majeure clause that may be contained in the contracts subject to arbitration will also depend on this.

In any case, recourse to arbitration will not come without difficulties as sanctions may also affect the provisions of funds and payments to the arbitral institutions set out in the arbitration clauses. Likewise, the place of residence and nationality of the arbitrators may have an impact when taking on an arbitration case as they may be affected by sanctions imposed by their home State even when the seat of arbitration is in another country. Law firms will also have to check the limitations imposed by sanctions. In some cases and jurisdictions, sanctions may even have an impact on the notion of arbitrability and even on the validity and enforceability of the arbitration clause.

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This is without taking into account Russia's own constraints, which in mid-2020 introduced the exclusive jurisdiction of Russian arbitration courts over disputes involving a party subject to sanctions or where the dispute arises from the application of sanctions. In December 2021 the Russian Supreme Court adopted an extensive interpretation of this law.

The experience gained in international arbitration on sanctions in countries such as Venezuela will undoubtedly be an unavoidable reference in the arbitration proceedings to come.



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