



GUIDANCE ON SANCTIONS AND RESTRICTIVE MEASURES

23 March 2023

CONTENTS

A. <u>INTRODUCTION</u>	3
B. <u>OVERVIEW</u>	4
What are Sanctions/Restrictive Measures and what is their scope of targets?	4
EU Restrictive Measures and UN Sanctions	5
Sanctions Categories	6
Cyprus legal framework	7
Other Competent Authorities	10
C. <u>UNDERSTANDING AND APPLYING SANCTIONS</u>	13
General Considerations	13
EU Restrictive Measures against Russia	14
Council Regulation (EU) 269/2014	15
Ownership and Control	16
Exemptions and derogations	20
Council Regulation (EU) 833/2014	21
Guidance	23
Sanctions Evasion	27
D. <u>SANCTIONS COMPLIANCE PROGRAM</u>	32
Sanctions Compliance Program	32
Challenges	35
E. <u>USEFUL LINKS</u>	36

A. INTRODUCTION

This document was prepared to provide guidance for the regulated entities of the Cyprus Securities and Exchange Commission (CySEC) and to serve as a single-source information document on the legal framework of Sanctions and Restrictive Measures. The guidance aims to promote awareness and understanding of the various obligations emanating from the framework, as well as the risks of non-compliance.

The guidance classifies the various types of Sanctions and Restrictive Measures that may affect regulated entities directly, or their clients, and provides general information on understanding and applying the various provisions of Sanctions and Restrictive Measures cover the national framework on adhering to Sanctions and Restrictive Measures, and illustrates the elements of an effective Sanctions Compliance Program.

Information contained in this guidance document is not supposed to be exhaustive, but rather to provide helpful considerations for CySEC's regulated entities on Sanctions and Restrictive Measures. Each regulated entity is responsible for developing and adopting their own Sanctions Application policies and procedures, to comply with the obligations emanating from the Sanctions and Restrictive Measures framework. This guidance document is meant to be read in conjunction to the relevant legislation, as analysed below, CySEC's AML/CFT Directive and any other relevant guidance issued by CySEC on these issues (i.e. Circulars).

B. OVERVIEW

What are Sanctions and Restrictive Measures and what is their scope of targets?

Sanctions, or restrictive measures, are a diplomatic tool which act as a lever of pressure, seeking to bring about a change and/or limit activities or policies, such as violations of international law, human rights or policies that do not respect the rule of law or democratic principles. It is a preventative and non-punitive instrument, within the framework of foreign policy, which act as a timely response to negative political changes and developments, whilst also sending a strong political message.

Measures, such as arms embargoes and other trade transactions (import/export restrictions), financial restrictions (asset freezes), as well as restrictions on admission (visa or travel bans) are some of the measures most commonly used to achieve the aims stated above, depending on the case. Such measures may target third-countries or non-State entities and individuals. They aim to focus much as possible on those who are responsible for the policies or actions deemed unacceptable, in order to minimize the negative impact on the local population, as well as on the legal activities of the targeted country. The United Nations (UN), European Union (EU) and individual countries (i.e. United States) impose the most important Sanctions/Restrictive Measures.

Sanctions vary in the **scope of targets**, the ways in which they are operational, their designation criteria and their prohibitions and penalties associated with their violation. EU sanctions may target governments of non-EU countries, non-state entities, as well as companies, groups, organisations, or individuals through various measures, including arms embargoes, restrictions on admission of listed persons (travel bans), freezing of assets, and other economic measures such as restrictions on imports and exports.

Sanctions exemptions and licenses authorize certain dealings that would otherwise be prohibited.

EU Restrictive Measures and UN Sanctions

UN Sanctions are imposed in the form of Security Council Resolutions, where the relevant provisions and prohibitions decreed, are included. The UN Security Council can take action to maintain or restore international peace and security under Chapter VII of the United Nations Charter. Today, there are fourteen (14) ongoing sanctions regimes, which focus on supporting political settlement of conflicts, nuclear non-proliferation, and counter-terrorism. The UN sanctions are legally binding and must be complied with by all UN members. UN sanctions are available to view on [UN Security Council Resolutions webpage](#).

EU Restrictive Measures are a tool in the EU's Common Foreign and Security Policy (CFSP), through which the EU can intervene where necessary to prevent conflict or respond to emerging or current crises, and to promote peace, democracy, and respect for the rule of law, human rights and international law. The EU Restrictive Measures are adopted, renewed or lifted by the EU Council, in the form of Regulations containing prohibitions and possible derogations. Currently, there are forty (40) different sanctions regimes in place. EU Member States are responsible for the implementation of EU Restrictive Measures, within the EU territory, as well as identifying breaches and imposing penalties. EU Restrictive Measures are **legally binding obligations** for:

- EU nationals, irrespective of their location
- Persons located within EU territory, whether permanently or temporarily
- Persons doing business in the EU, for example companies and organizations incorporated under EU Member State law, including **branches** of EU companies in third countries. **Subsidiaries** of EU companies in third countries would usually be

subject to the respective jurisdiction laws, where the subsidiary company was incorporated, therefore would not be subject to EU Restrictive Measures.

The [EU Sanctions Map](#) provides comprehensive details of all EU sanctions regimes and their corresponding legal acts, including a whistleblower tool, a consolidated list of travel bans and a [consolidated list of financial sanctions](#).

Sanctions Categories

Sanctions can be categorised according to their characteristics:

- **Comprehensive Sanctions:** These sanctions target **entire countries or geographic regions** and prohibit most activity involving the targeted jurisdictions i.e. asset freezes, prohibitions on products and services, imports and exports, diplomatic cessations etc. Their aim is to change governmental policies and activities by cutting the targeted country out of the markets, imposing economy-wide costs and restricting access to a wide range of goods and services. The UN, the EU and other countries such as the U.S. have imposed comprehensive sanctions (e.g. U.S. sanctions on North Korea).
- **Regime-based Sanctions:** These sanctions target **current or former governments or regimes**. They are primarily list-based, focusing on high-ranked officials of the respective regime that posed threats. Their aim is to protect human rights, therefore regime-based sanctions target any legal or natural person involved in serious violations of human rights. The UN, the EU and other countries such as the U.S. have imposed regime-based sanctions (e.g. EU Restrictive Measures against Belarus for internal repression).
- **Sectoral Sanctions:** These sanctions target **entities in key sectors of a country's economy** with the aim to limit their activities in the respective sector. Sectoral sanctions do not impose asset freezes, rather they restrict the ability of the targeted entities to access financing, import or export equipment, goods, services or

technology. (e.g. EU Restrictive Measures against Russia, for prohibitions on the energy sector, imports/exports of specific goods/services, aviation and space industry, gold and precious metals, etc.).

- **Conduct-Based or List-based Sanctions:** These sanctions target **any person or organisations that engage in any type of malicious activity**, such as terrorism, drugs trafficking, bribery, corruption, organized crime, proliferation of weapons of mass destruction, human rights violations, etc. For persons included in these sanctions lists, their assets and economic resources must be frozen and is prohibited to make any funds or economic resources available to them.
- **Secondary Sanctions:** These sanctions are a special category of sanctions, which are applied by the U.S. to prohibit engagement in transactions with sanctioned persons in jurisdictions where the U.S. has no authority.

Cyprus legal framework

The Republic of Cyprus, as a UN member and an EU Member State has an obligation to implement:

- Sanctions adopted by the relevant Security Council Resolution pursuant to Article 41 of Chapter VII of the Charter of the United Nations, which have direct and immediate application in the Republic of Cyprus. This is in accordance with the Law 58(I) of 2016 which provides for the Implementation of the Provisions of the Resolutions or Decisions of the United Nations Security Council (Sanctions) and the Decisions and Regulations of the Council of the European Union (Restrictive Measures). In addition, the EU, and consequently the Republic of Cyprus, implement UN sanctions by incorporating them into EU law, through the adoption of relevant Decisions and Regulations within the framework of the Common Foreign and Security Policy.
- Restrictive measures adopted by the Council of the European Union, through the issuance of relevant Decisions (under Article 29 of the Treaty on European Union) and

Regulations (under Article 215 of the Treaty on the Functioning of the EU), within the framework of the CFSP, which supersede national law. These are binding legal acts in their entirety for EU Member States and their citizens, requiring direct and immediate application to the integral legal order of EU Member States.

- Any other European legislation or legally binding international instrument related to Sanctions and Restrictive Measures.

As an EU Member State, Cyprus has the obligation to implement the Restrictive Measures of the Decisions/Regulations adopted by the EU Council. EU Restrictive measures are **directly enforceable** to Cyprus, without the need to transpose the relevant acts/provisions into national legislation. Other sanctions regimes are also relevant in Cyprus i.e. U.S. Sanctions, for example on US-dollar transactions taking place in Cyprus.

The law that provides for the Implementation of the Provisions of the United Nations Security Council Resolutions or Decisions and the European Union Council's Decisions and Regulations in Cyprus is [Law 58\(I\)/2016](#). In accordance with the said Law, the regulated entities are responsible to comply with the UN Sanctions and EU Restrictive Measures. Important sections of **Law 58(I)/2016**, among others, are:

- Section 3(1) designates the competent authorities for securing the implementation of Sanctions/Restrictive Measures in Cyprus, and these are defined in accordance to the provisions of section 59 of the Prevention and Suppression of Money Laundering Activities Laws of 2007.
- Section 4 provides for strict penalties for non-compliance (including the possibility of imprisonment and criminal prosecution).
- Section 6 provides for the transmission of data/information to the Police, in case a competent authority, ascertains that a person does any act in violation of Sanctions and Restrictive Measures.

Furthermore, the Cyprus Legal framework consists of the Combating of Terrorism and Victims' Protection Law, [N. 75\(I\)/2019](#). The said Law deals with a number of issues, including the definition of terrorism felonies, the responsibilities of legal persons, responsibility of entities obliged under the AML/CFT Law to confiscate property belonging or controlled by persons engaged in terrorism and the responsibility of supervisory authorities for ensuring that regulated entities abide with the provisions of this law.

Breaching the provisions of any of the Laws referred above constitute a serious offence, which may trigger significant penalties/damages, such as:

- **Criminal penalties:** Law 58(I)/2016 provides for strict penalties for non-compliance with Sanctions/Restrictive Measures. If a natural person is found guilty of an offence, they may be subject to imprisonment not exceeding 2 years or a pecuniary penalty not exceeding €100,000 or both. In the case of a legal person, it may be subject to a pecuniary penalty not exceeding €300,000. Criminal prosecution may be carried out with the approval of the Attorney General.
- **Administrative penalties:** For implementing Law 58(I)/2016, the competent authorities may also take administrative measures in accordance with the provisions of Section 59(6) of the AML/CFT Law. These includes the possibility of fines up to €1.000.000 and/or suspension, or withdrawal, of the regulated entity's license.
- **Reputational damages:** The consequences of reputational damage are very high and possible losses will certainly be higher than any administrative penalty imposed, if the name of a regulated entity is linked or associated with a sanctioned person who has committed sanctions-related violations.

CySEC's AML/CFT Directive, and specifically paragraph 36 on the detention of actions that are in breach of Sanctions/Restrictive Measures, serve as **secondary legislation** for compliance with Sanctions and Restrictive Measures. Further information on the provisions of Paragraph 36 can be found in Section D.

Other Competent Authorities

❖ **Advisory Body on Financial Sanctions (SEOK)**

The Council of Ministers of the Republic of Cyprus on 2012 decided to establish the “Advisory Body on Financial Sanctions”, which is chaired by the Ministry of Finance and comprises with representatives of the FIU, Ministry of Justice, Ministry of Foreign Affairs, Ministry of Trade, Commerce and Industry, Registrar of Companies and supervisory authorities of the financial sector, namely CBC and CySEC. The Advisory Body on Financial Sanctions examines requests of credit institutions for the release of funds and financial resources which fall within the exceptions provided for in the relevant Decisions/Resolutions of the UN Sanctions and the EU Restrictive Measures. The Body convenes as and when required, while its competencies were expanded on April 2022 to include:

- ✓ Examining requests regarding the acceptance of deposits and providing crypto-assets related services.
- ✓ Examining requests, which fall within the exceptions provided for in the relevant Decisions/Resolutions of the UN Sanctions and the EU Restrictive Measures, for providing services to designated persons/entities.
- ✓ Examining requests regarding possible ‘wrongful’ freezing of funds in credit institutions.

❖ **Unit for the Implementation of Sanctions in the Financial Sector (MEK)**

The Council of Ministers of the Republic of Cyprus on 2016 decided the establishment of the “Unit for the Implementation of Sanctions in the Financial Sector” in relation to sanctions imposed by UNSC Resolutions and Restrictive Measures imposed by EU Council Regulations. The Unit is chaired by the Ministry of Finance and comprises with representatives from the Attorney General’s Office, Ministry of Foreign Affairs, Central Bank of Cyprus, Cyprus Securities and Exchange Commission and Ministry of Trade, Commerce and Industry. The Unit deals with the examination of requests that fall within

the financial sector and are affected by UN Sanctions and/or EU restrictive measures. The Unit convenes as and when required in order to examine cases that fall under its remit.

❖ **Ministry of Foreign Affairs (MFA)**

The Ministry of Foreign Affairs acts as the liaison between the Sanctions issuing authorities (EU and UN) and the various competent authorities, regulated entities and persons in Cyprus. The MFA is involved in the decision-making process regarding the enforcement of restrictive measures at EU level, but not regarding sanctions within the framework of the UN Security Council. During the procedure for adopting EU restrictive measures, the MFA requests, where possible, the opinion and suggestions of the competent services and authorities of the Republic, in order to formulate a national position. Additionally:

- ✓ It informs the national authorities and relevant departments when UN sanctions or EU restrictive methods are adopted, and/or amended and/or cease to apply;
- ✓ It forwards, to the competent UN Sanction Committees and European institutions, requests and/or queries from the authorities of the Republic;
- ✓ It forwards, to the relevant UN Sanction Committees and European institutions, where required, requests for the release of certain funds (abroad) or on Cypriot territory, which have been blocked due to UN sanctions and or EU restrictive measures;
- ✓ It informs the relevant UN Sanction Committees and/or relevant EU bodies, where required, on the implementation of exceptions provided for in UN Resolutions and/or Decisions and Regulations of the EU Council;
- ✓ It forwards, to the relevant UN Sanctions Committees, where required, reports and/or information on the implementation of UN sanctions by the competent authorities of the Republic of Cyprus.

The MFA does not have the competence to give approvals, permits and/or official opinions and advice on issues regarding the application of sanctions, nor can it interpret the relevant provisions of UN Resolutions and EU Decisions and Regulations.

❖ **Ministry of Finance (MoF)**

The Ministry of Finance is chairing the two committees in Cyprus, which examines requests on Sanctions/Restrictive Measures, namely the Advisory Body on Financial Sanctions and the Unit for the Implementation of Sanctions in the Financial Sector. MoF has also issue various announcements in relation to the recent and ongoing imposition of EU Restrictive Measures against Russia for its military aggression against Ukraine. Some notable announcements, which provided clarifications for the effective implementation of sanctions against Russia, are elaborated in Section C.

C. UNDERSTANDING AND APPLYING SANCTIONS

General Considerations

- Having in mind what was stated in Section B above, the regulated entities should be aware and take into consideration all sanctions regimes listed above in their business dealings. Although, screening potential and existing business relationships against list-based sanctions is a decent start to assess sanctions-related risks, **regulated entities should consider all relevant sanctions regimes that may apply** when deciding for establishing or continuing a business relationship, or during processing transactions and/or reviewing customer due diligence (CDD) documents in the course of ongoing monitoring of business relationships. For example, even if a customer and/or the UBO of a customer is not included in any sanctions lists, other sanctions regimes might still affect the business relationship, e.g. the customer is engaging in transactions in the Russian energy sector, that seem prohibited considering sectoral sanctions (i.e. EU Restrictive Measures against Russia).
- A Sanctions List entry usually includes information that is useful for client identification purposes, in order to help regulated entities in their sanctions screening processes on **verifying a possible “true match”** (e.g. known addresses, aliases, passport and other identification numbers). Therefore, the regulated entities, by collecting complete and accurate customer information during onboarding clients and ongoing monitoring of the business relationship, will ensure effective verification during sanctions screening processes.
- Regulated entities should have processes in place to receive **timely updates for all relevant sanctions lists from reliable sources** (i.e. RSS Feed on notifications for sanctioned persons). These ongoing updates may include “new” list entries but may

also include updates to existing list entries (i.e. new aliases, change in spelling of name, updated ID numbers, etc.).

- Regulated entities should have effective systems and controls for **understanding their clients' business activities and transactions** and maintaining current, accurate and complete CDD information, for the purpose not only to comply with the obligation for freezing of assets for “designated persons”, but also for other prohibitions/restrictions imposed (e.g. for a client with business activities in the oil industry, the prohibition of Article 3m of Regulation (EU) 833/2014 to purchase, import or transfer, directly or indirectly, crude oil or petroleum products, if they originate in Russia or are exported from Russia, should be assessed for the specific client).

EU Restrictive Measures against Russia

Since March 2014, the EU has progressively imposed restrictive measures (sanctions) against Russia, initially in response to the illegal annexation of Crimea and Sevastopol and the deliberate destabilisation of Ukraine. On 23 February 2022, the EU expanded the sanctions 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. After 24 February 2022, in response to Russia's military aggression against Ukraine, the EU massively expanded the sanctions. It added a significant number of persons and entities to the EU Sanctions list, and adopted unprecedented measures with the aim of significantly weakening Russia's economic base, depriving it of critical technologies and markets, and significantly curtailing its ability to wage war.

In parallel, the EU sanctions regime concerning Belarus has been expanded in response to Belarus involvement in Russia's military aggression against Ukraine, in addition to the sanctions already in place for the situation in Belarus. This sanctions regime consists of an array of financial, economic and trade measures. The respective Council Regulations are

addressed to all persons, entities and bodies under EU jurisdiction, for which they create legal obligations.

The timeline of EU Restrictive Measures against Russia, consisting of ten sanctions packages so far, can be found [here](#).

Council Regulation (EU) 269/2014

[Council Regulation \(EU\) 269/2014](#) provides for the freezing of assets of designated persons/entities. Article 2 states that all funds and economic resources belonging to, owned, held or controlled by any natural or legal persons, entities or bodies, or natural or legal persons, entities or bodies associated with them, as listed in Annex I, shall be frozen and no funds or economic resources shall be made available, directly or indirectly, to or for the benefit of natural or legal persons, entities or bodies, or natural or legal persons, entities or bodies associated with them, as listed in Annex I.

‘freezing of economic resources’ means preventing the use of economic resources to obtain funds, goods or services in any way, including, but not limited to, by selling, hiring or mortgaging them;

‘freezing of funds’ means preventing any move, transfer, alteration, use of, access to, or dealing with funds in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination or any other change that would enable the funds to be used, including portfolio management;

Following the [Tenth Sanctions package](#) adopted by the EU Council, Article 8 of Council Regulation (EU) 269/2014 introduced more detailed **reporting obligations on funds and economic resources belonging to listed individuals and entities** which have been frozen or were subject to any move shortly before the listing.

Furthermore, Article 9 states that it shall be prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent prohibitions in this Regulation. The EU has also introduced a new listing criterion, which will allow it to sanction persons who facilitate the infringements of the prohibition against circumvention of sanctions. Finally, the EU has launched the [EU Sanctions whistle-blower tool](#) to enable the anonymous reporting of possible sanctions violations, including circumvention.

Ownership and Control

Ownership (the “50%” Rule):

All Sanctions lists include persons, either natural or legal, which are listed by name and are commonly referred as “designated persons” or “listed persons”. If a listed person is deemed to own (directly or indirectly through intermediary companies) or control a non-listed entity, it can be presumed that the control also extends to the assets of that legal entity (and its subsidiaries), and that any funds or economic resources made available to that entity would reach or benefit the listed person. Therefore, the assets of the legal entity which is owned or controlled by the listed person must also be frozen, according to Article 2 of Council Regulation (EU) 269/2014.

EU Restrictive Measures apply the “50% rule”. When assessing whether a legal entity is owned by another person or legal entity, the criterion to be considered is the **possession of more than 50% of the proprietary rights of a legal entity or having majority interest in it**. The assessment for the 50% rule should also take into consideration the **aggregate ownership** i.e. if a legal entity is directly owned by more than one listed persons, their aggregate ownership should be considered and if it amounts to more than 50%, then the legal entity is considered to be a sanctioned entity.

Control:

If the ownership criterion is not met (50%), the control of the assessed entity should be considered. **‘Control’ means that a person is able to and effectively asserts a decisive influence** over the conduct of the legal entity that is being assessed. According to updated guidance provided by the EU Council on [EU Best Practices for the effective implementation of restrictive measures](#), the **factors** to be taken into account in assessing whether a legal entity is controlled by another person or entity, alone or pursuant to an agreement with another shareholder or other third party, could include, inter alia:

- a) having the right or exercising the power to appoint or remove a majority of the members of the administrative, management or supervisory body of such legal person or entity;
- b) having appointed solely as a result of the exercise of one's voting rights a majority of the members of the administrative, management or supervisory bodies of a legal person or entity who have held office during the present and previous financial year;
- c) controlling alone, pursuant to an agreement with other shareholders in or members of a legal person or entity, a majority of shareholders' or members' voting rights in that legal person or entity;
- d) having the right to exercise a dominant influence over a legal person or entity, pursuant to an agreement entered into with that legal person or entity, or to a provision in its Memorandum or Articles of Association, where the law governing that legal person or entity permits its being subject to such agreement or provision;
- e) having the power to exercise the right to exercise a dominant influence referred to in point (d), without being the holder of that right;
- f) having the right to use all or part of the assets of a legal person or entity;
- g) managing the business of a legal person or entity on a unified basis, while publishing consolidated accounts;
- h) sharing jointly and severally the financial liabilities of a legal person or entity or guaranteeing them;
- i) having influence as regards corporate strategy, operational policy, business plans, investment, capacity, provision of finance, human resources and legal matters;

- j) putting in place or maintaining mechanisms to monitor the commercial conduct of the legal person or entity;
- k) other indicia such as sharing a business address or using the same name which could cause third parties to have the impression that the two entities are in fact part of the same undertaking.

If any of the above factors are satisfied, it is considered that the legal entity is controlled by another person or entity, unless the contrary can be established on a case-by-case basis. The control criterion should be decided on a case-by-case basis, following a thorough assessment by the affected regulated entity.

Making indirectly available funds or economic resources to designated persons and entities:

If the ownership or control is established in accordance with the above criteria, the making available of funds or economic resources to non-listed legal persons which are owned or controlled by a listed person will, in principle, be considered as making them indirectly available to the latter, unless it can be reasonably determined, on a case-by-case basis using a risk-based approach, taking into account all relevant circumstances, including the criteria below, that the funds or economic resources concerned will not be used by or be for the benefit of that listed person or entity.

The **criteria** to be taken into account include, inter alia:

- a) the date and nature of the contractual links between the entities concerned (for instance sales, purchase, or distribution contracts);
- b) the relevance of the sector of activity of the non-listed entity for the listed entity;
- c) the characteristics of the funds or economic resources made available, including their potential practical use by, and ease of transfer to, the listed entity.

An economic resource will not be considered to have been for the benefit of a listed person or entity merely because it is used by a non-listed person or entity to generate profits which might be in part distributed to a listed shareholder.

Family members or other non-designated third parties:

Sanctions against designated persons could also extend to family members or non-designated third parties, if, as part of the “control factors” mentioned above, any of the below **criteria** is met (Q5 of [EU FAQs](#) on related to Council Regulation 269/2014):

- a) the closeness of business and family ties between the listed person and the third person;
- b) the professional independence of the third person now owning the assets;
- c) previous gifts given to the third person and how they compare to the transaction in question;
- d) the frequency/regularity of previous gifts to the third person;
- e) the content of formal agreements between the listed person and the third person;
- f) the nature of the assets (e.g. whether these are shares in a company owned or controlled by the listed person).

Although funds and other economic resources are held, owned, belong to, or are controlled by non-designated persons, these could still be subject to sanctions and as such bear the obligation to be frozen, if, following an assessment for family members or other non-designated third parties, are deemed to be owned or controlled by the designated person.

Case examples – “Ownership and control” assessments:

- ✓ Designated person X owns 50% of Company A and 50% of Company B. Companies A and B each own 25% in Company C. Company C should be considered as a sanctioned entity, taking into account the ownership criterion (50%).

- ✘ Designated person Z owns 50% of Company A and 25% of Company B. Companies A and B each own 25% in Company C. Company C should NOT be considered as a sanctioned entity, taking into account the ownership criterion (50%), however the control factors should be considered.
- ✓ Company X has three shareholders, each owns 33.3% of the shares. Two of the three shareholders were designated as sanctioned persons. Company X should be considered as a sanctioned entity, taking into account the aggregate ownership (66%).
- ✘ Company Z has four shareholders, each owns 25% of the shares. One of the four shareholders was designated as a sanctioned person. After assessing the 'Control' criteria, it was ascertained that the sanctioned person was not able to effectively assert a decisive influence over the conduct of business. Company Z should NOT be considered as a sanctioned entity. However, safeguards must be in place to adhere to the applicable sanctions for the sanctioned person i.e. not making directly or indirectly available funds or economic resources to the designated person.
- ✓ Designated person X owns 20% of Company A. The other two shareholders each owns 40% of the shares. Designated person X has the power to appoint or remove any member of the board of directors of Company A. Company A should be considered as a sanctioned entity, taking into account the 'control' factors.

Exemptions and derogations

National competent authorities may grant exemptions for the release of frozen funds/economic resources of designated persons, under specified provisions in the regulations, such as:

- Satisfy **basic needs** such as payments for food, rent, medical treatment, taxes, insurance, public utility charges.

- **Humanitarian aid** and civil society activities that directly promote democracy, human rights in Russia.
- Payment of **reasonable professional fees** or expenses related to legal services.
- Payment of fees or services charges for **maintenance of frozen funds** or economic resources.
- **Payments due under contracts existed prior the date of listing/designation.**
- **Other extraordinary expenses**, subject to authorisation by the national competent authorities
- **Provision of certain services to sanctioned persons/entities** provided that these services are strictly **limited to what is absolutely necessary to continue to exist and for essential activities, necessary to function legally.**

Exemptions and derogations are subject to authorization by the competent authority of the Member State and only after obtaining such authorization, a release of frozen funds may take place. In Cyprus, **the Advisory Body on Economic Sanctions** is the competent authority for authorizing the release of frozen funds that fall within the derogations prescribed by the relevant EU Regulation.

Council Regulation (EU) 833/2014

[Council Regulation \(EU\) 833/2014](#) provides for various prohibitions on specific activities involving Russia. Notable articles that contains specific provisions for financial prohibitions/restrictions against Russia are:

- **Article 5:** Prohibition on **investment services** for the issuance of certain **transferable securities and money-market instruments.**
- **Article 5a:** New **reporting obligations** to the Member States and to the Commission on **immobilized reserves and assets of the Central Bank of Russia.**
- **Article 5aa:** Prohibition on **transactions with the Russian government and Russian Central Bank.**

- **Article 5b:** Prohibition on **deposits** from Russian nationals or natural persons residing in Russia, or legal persons, entities or bodies established in Russia, if the total value of deposits of the natural or legal person, entity or body per credit institution exceeds EUR 100.000. This prohibition is extended to **crypto-asset wallet**, account or custody services to Russian nationals or natural persons residing in Russia, or legal persons, entities or bodies established in Russia.
- **Article 5e:** Prohibition on **central securities depository services** to Russian persons.
- **Article 5f:** Prohibition to **sell transferable securities** denominated in any official currency of a Member State **issued after 12 April 2022**, or units in collective investment undertakings providing exposure to such securities to Russian persons.
- **Article 5h:** Prohibition on specialised financial messaging services (i.e. **SWIFT**) for **major Russian and Belarusian banks**.
- **Article 5i:** Prohibition on **export of banknotes** in any Member State's currency to Russian persons.
- **Article 5m:** Prohibition to **register, provide a registered office, business or administrative address as well as management services to, a trust or any similar legal arrangement** having as a trustor or a beneficiary Russian nationals or natural persons residing in Russia and legal persons, entities or bodies established in Russia.
- **Article 5n:** Prohibition to **provide, directly or indirectly, accounting, auditing, including statutory audit, bookkeeping or tax consulting services, or business and management consulting or public relations services** to: (a) the Government of Russia; or (b) legal persons, entities or bodies established in Russia. The eighth sanctions package has widen the scope of services that can no longer be provided to the government of Russia or legal persons established in Russia. These services now include **IT consultancy, legal advisory, architecture and engineering services**.
- **Article 12: Circumvention clause.**

It should be noted that most of the above prohibitions provides also for **exemptions and derogations**, subject to authorization by the national competent authorities i.e. in Cyprus,

the Advisory Body on Economic Sanctions and the Unit for the Implementation of Sanctions in the Financial Sector.

Guidance

❖ EU Commission

The EU Commission has published guidance and extensive **Frequently Asked Questions (FAQs)** covering a broad range of topics and continues to update them, in order to assist stakeholders on how to apply the sanctions packages. The Consolidated version of these FAQs can be found in Section D on Useful Links.

Furthermore, all information regarding the Sanctions adopted following Russia’s military aggression against Ukraine, including an overview of sanctions in place, timeline and other useful links can be found [here](#).

❖ Ministry of Finance

The Ministry of Finance (MoF) have issued announcements regarding the implementation of sanctions against Russia. An announcement, dated [13.04.2022](#), provided clarifications on the application of prohibitions introduced on trusts and similar legal arrangements. Also, announcement dated [27.05.2022](#), provided guidance on specific issues related to:

➤ Non-sanctioned persons/entities:

- The term “entities” in article 5b of Regulation (EU) No 833/2014 as amended by Regulation (EU) 328/2022 comprises all entities established in Russia, including subsidiaries of EU operators which are incorporated in Russia.
- The prohibition in Article 5b of Regulation 833/2014 only apply to Russian nationals or natural person residing in Russia or any legal person, entity or body

established in Russia. It does not apply to entities owned by Russian/Belarusian nationals or natural persons residing in Russia/Belarus when the entities are registered in a country other than Russia/Belarus.

➤ Services provided to sanctioned persons/entities:

- The opinion of European Commission of 29.8.2019 confirms that essential services include drawing up of annual accounts, bookkeeping, declaring taxes, ensuring the administrative management (strictly limited to what is necessary to continue to exist) of a company, and the payment of taxes. It is the view of the MoF that the essential services can be provided as if they are strictly of the nature aforementioned.
- With regards to the provision of legal services, note that Article 4b of the Council Regulation 269/2014 should be interpreted in light of the fundamental rights protected under the Charter, in particular the right of defense. Accordingly, the provision of services that are strictly necessary for the exercise of the right of defense in judicial proceedings and the right to an effective legal remedy is not affected and is not subject to a derogation by the national competent authorities.

➤ General authorization of specific payments from sanctioned persons/entities:

- The release of frozen funds by a credit institution, for the payment of amounts due to public authorities namely for Tax, Social insurance, Company Registrar fees and Public utilities charges is deemed as authorised.
- The general authorization of specific payments is provided only for payments to public authorities in order to ensure that no funds will be made available to sanctioned persons with no authorization.
- The credit institutions are responsible to ensure that these amounts are paid to the public services, the amounts are reasonable and the release of funds is only allowed by way of transfer or direct debit from the account of the sanctioned person to the public authority.

- For any other exemptions of frozen funds that might be allowed according to Regulation (EU) 269/2014, the credit institutions should apply to the Advisory Body on Financial Sanctions following the existing procedures.
- For applications on exemptions to the prohibitions related with the financial sector, the interested persons should apply to the Unit for the Implementation of Sanctions in the Financial Sector following the existing procedures.

The MoF have also issued announcements regarding the new reporting obligations, introduced by the Tenth Sanctions package against Russia, on Article 8 of Council Regulation (EU) 269/2014, dated [6.3.2023](#), including a new reporting template, and on Article 5a of Council Regulation (EU) 833/2014, dated [10.3.2023](#).

❖ CySEC

CySEC is providing guidance to its regulated entities from section ‘Sanctions/Restrictive Measures’ on its website.

- The Section on “[Documentation and Useful Links](#)” is providing information on the existing legal framework for Sanctions and Restrictive Measures, while includes relevant guidance (documentation and useful links) from competent authorities for the implementation of the provisions of Sanctions and Restrictive Measures, including Consolidated Lists of sanctioned persons/entities, EU Best Practices, EU Sanctions map, etc.
- The Section on “[Notifications](#)” is forwarding email notifications to the regulated entities (through the RSS Feed) with information on new or amending UN Resolutions and/or EU Decisions/Regulations and any other national and international announcements for Sanctions and Restrictive Measures. Important information is transmitted through this section e.g. new designations of sanctioned persons/entities, new prohibitions/restrictions, issued documents from various

competent authorities on Sanctions Evasion typologies/risks, the EU Commission's Consolidated FAQs on the implementation of Regulations (EU) 833/2014 and 269/2014, etc.

Furthermore, CySEC has issued **Circulars** when important developments on Sanctions/Restrictive Measures have occurred or when CySEC requests reporting from its regulated entities on relevant issues. These Circulars include:

- Circular [C474](#), where information was provided to the regulated entities on complying with Sanctions and Restrictive Measures. The regulated entities were reminded of their ongoing obligation to implement EU Restrictive Measures and to take the appropriate actions/measures, if required. CySEC urged the regulated entities to continuously monitor the section "Sanctions and Restrictive Measures" on CySEC's website and ensure their full compliance with their obligations.
- Circular [C475](#), where CySEC informed the regulated entities that U.S. Sanctions, although not enforceable in the EU, are expected to be accounted for, in the context of a relevant risk assessment and take proportionate action, including refraining from engaging with affected persons.
- Circular [C489](#), where guidance/instructions was provided to the regulated entities on the latest Sanctions and Restrictive Measures imposed against Russia. The regulated entities were reminded of their obligation to implement in all cases the EU restrictive measures and take mandatory actions/measures such as freezing assets and prohibiting access to funds for designated persons/entities, where applicable. Furthermore, CySEC urged the regulated entities to examine immediately the existence of any business relationships with persons/entities subject to Sanctions/Restrictive Measures, implement appropriate actions/measures in the case of existence of such business relationships and inform CySEC accordingly.
- Circular [C494](#), which provided informative material issued from competent authorities in relation to sanctions evasion attempts and red flags.

- Circular [C501](#), which provided clarifications on the restrictions imposed on trusts, while informing the regulated entities on amended articles of EU Regulations/Decisions with prohibitions introduced to Belarusian and Russian natural and legal persons (i.e. prohibition to sell transferable securities, prohibition to accept and provide crypto-asset wallet, account or custody services) and requesting from the regulated entities to inform CySEC on the appropriate actions/measures taken or intended to be taken for compliance with the said prohibitions and report on the level of exposure and possible impact on them.
- Circular [C511](#), where the Administrative Service Providers (ASPs) were called upon to examine their records and inform CySEC on business relationships with Existing Trusts and/or Existing Similar Legal Arrangements, for the purpose of assessing the implications of Article 5m.
- Circular [C517](#), where all regulated entities were called upon to inform CySEC regarding the appropriate actions/measures taken or intended to be taken for compliance with Articles 5m, 5n and 3m of the relevant EU Council's Regulations.
- Circular [C527](#), where CySEC informed its regulated entities for the amendment of Article 9 of Regulation (EU) 269/2014 and the obligation of designated persons to report on their own, the funds or economic resources belonging to them, own, held or controlled by them, and which are located in the Republic of Cyprus.
- Circular [C551](#), where CySEC informed its regulated entities for the adoption of the Tenth sanctions package with the introduction of more detailed reporting obligations and inform CySEC accordingly.

Sanctions Evasion

❖ Techniques

In an effort to circumvent sanctions imposed, designated persons will attempt to move assets and process transactions without raising alerts. Regulated entities should be aware

of common techniques used by designated persons to evade sanctions. Some of these techniques include:

- **Use of corporate vehicles such as legal entities and legal arrangements (e.g. trusts)** and complex structures to obscure the ownership and control of their assets and the origin of funds.
- **Use of shell companies** to conduct business activities and execute financial transactions in an international environment. Shell companies are usually set up in countries with lax regulation framework or transparency requirements. The transactions executed often involve cash transfers or are funded by a third-party with a known nexus to sanctioned persons.
- **Use of ‘strawmen’** and/or related third parties who are acting on behalf of, or at the direction of a designated person seeking to hide the origin of assets and funds.
- **Use of jurisdictions that have been associated with financial flows from Russia** and/or jurisdictions that are not adopting and enforcing EU Restrictive Measures (e.g. Turkey, UAE).
- **Use of convertible virtual currencies** for the move and/or storage of funds to obscure their origin.

❖ Red Flags/Typologies

The common Sanction Evasion techniques used by designated persons has resulted in a number of professionals and businesses being vulnerable to be used for sanctions circumvention, including the financial sector and the corporate services sector. Competent authorities have issued guidance on red flags/typologies on Sanctions Evasion to assist the regulated entities in identifying potential sanctions evasion activity.

FinCEN has issued a [paper](#) that alerts all financial institutions on Sanctions Evasion Typologies/Red Flags. The Paper includes red flags which cover evasion attempts, such as:

- **Abuse of the financial system** (use of corporate vehicles, shell companies and third parties to shield the identity of sanctioned persons, newly established accounts that attempt to send or receive funds from a sanctioned institution, non-routine foreign exchange transactions etc.).
- **Use of convertible virtual currencies** (transactions initiated from or sent to non-trusted Internet Protocol (IP) addresses such as from locations in Russia and Belarus and customers using exchanges or foreign-located Money Service Businesses (MSBs) in a high-risk jurisdiction with AML/CFT/CP deficiencies etc.).
- **Ransomware attacks and other cybercrime** (transfer of funds using a virtual currency 'mixing' service, etc.).

Furthermore, FinCEN has also issued an [alert](#) regarding red flags for transactions in real estate, luxury goods and other high-value assets of sanctioned Russian elites and their family members and those through which they act. This alert provides red flags to assist financial institutions in identifying suspicious transactions and clarify their reporting obligations.

Moreover, the **UK's National Economic Crime Center (NECC)** has issued a red alert regarding sanctions evasion typologies on Russian Elites and Enablers. This [Paper](#) provides suspicion indicators of being used to evade sanctions, such as:

- **For the detection of frozen asset transfers:**
 - Designated persons are communicating changes to the beneficial ownership of their corporate structures, such as Private Investment Companies (PICs) and Joint Stock Companies (JSC), to non-Russian or dual national family members or associates, or nominee directors/shareholders, prior to, or shortly after sanctions taking effect. These new individuals are likely to be a front, with the designated person maintaining indirect control.
 - Changes to ownership of a corporate holding to reduce ownership stakes to below the 50% threshold, shortly before or after sanctions designations. Where

the transaction does not appear to be at “arms-length”, the designated person may still be able to initiate undue influence through associates or existing corporate governance, or through a joint arrangement.

- Use of trust arrangements or complex corporate structures involving offshore companies, with circumstances of transfers calling into question whether the original owner retains indirect control or otherwise could retain a benefit from the assets transferred.
- Holding companies based in jurisdictions that are offshore and/or historically linked to former Soviet Union jurisdictions.

➤ **For the detection of enablers:**

- Trust and Company Service Providers (TCSPs) offering nominees and trustee services to designated persons and close family members or business associates.
- Use of banks and financial organisations owned by close associates of designated persons.
- The appointment of a nominee director to manage the assets of the company and beneficial ownership is obscured through the use of nominee shareholders and a deed of trust between the parties, with the designated person claiming to have divested the asset.
- The use of a complex trust structure for the ownership of a luxury asset, which is overseen by a trust company and its trustees for no apparent legitimate reason.

➤ **For the detection of suspicious payments:**

- Holding companies based in jurisdictions that are offshore and historically linked to assets in the former Soviet Union.
- Identification of transactions by holding companies linked with designated persons with Swiss bank accounts and offshore-registered legal persons.
- Payments via a Fintech with Russian investor nexus including customer’s transactions that are initiated from or sent to IP addresses that have non-trusted

sources, or are located in Russia, Belarus, jurisdictions with FATF-identified AML deficiencies or comprehensively sanctioned jurisdictions.

- Circumvention attempts through Open Account Trade-Based Money Laundering typology, such as increases in third party open account payments.

D. SANCTIONS COMPLIANCE PROGRAM

Paragraph 36 of CySEC's AML Directive provides for the detention of actions that are in breach of Sanctions/Restrictive Measures. The regulated entities have the obligation to design and implement measures and procedures for the detection of actions that are in breach or may potentially be in breach of the provisions of Sanctions/Restrictive Measures. Furthermore, the regulated entities shall record in their Risk Management and Procedures Manual regarding money laundering and terrorist financing the measures and procedures for the detection of actions that are in breach or may potentially be in breach of the provisions of Sanctions/Restrictive Measures.

Sanctions Compliance Program

A Sanctions Compliance Program is the compliance framework of an entity that provides safeguards against sanctions-related risks and potential damages from sanctions breaches. For an effective Sanctions Compliance Program, the following five elements are essential:

1. Management commitment

Compliance culture throughout the organisation should start from the management. The management should be setting the tone from the top, by embedding sanctions compliance culture throughout all functions of the organisation and be reflected in important decisions. Furthermore, adequate resources and management support should be committed for Sanctions Compliance purposes. Accountability should also be clear and evident in all levels of senior management.

2. Sanctions risk assessment

A sanctions risk assessment is key in identifying, assessing and mitigating any sanctions-related risks that are relevant to the organisation's business operations and clients.

Sanctions risks should firstly be identified within a business-wide risk assessment that will allow the organisation to identify which business activities, locations and clients are more vulnerable to sanctions-related risks and how in the conduct of business sanctions provisions could be breached, consequently allocating sanctions-related resources to the vulnerable areas.

Further on, the Sanctions Risk assessment should be conducted on a client basis, by identifying and assessing sanctions-related risks emanating from clients' activities (i.e. dual-use business products that are restricted), clients' characteristics (complex structures, omnibus accounts), locations (i.e. jurisdictions under embargoes), products/services (i.e. can the service offered be exploited for sanctions evasion) and delivery channels. The Sanctions risk assessment should ultimately identify and evaluate potential threats and vulnerabilities that the organisation is facing from sanctions-related risks that if not properly managed, it might lead to possible violations of Sanctions/Restrictive Measures.

Unfortunately, EU guidance on effective Sanctions risk assessment is not available at the moment, but regulated entities could draw helpful information from general guidance issued for Risk-based approach (i.e. FATF guidance). The compliance with the European financial sanctions regime was outside the scope of the Revised EBA Guidelines on ML/TF risk factors (Circular C465).

3. Internal policies, procedures, systems and controls

As stated at the beginning of this section, paragraph 36 of CySEC's AML Directive provides for the detention of actions that are in breach of Sanctions/Restrictive Measures. The regulated entities must design and implement effective policies, procedures, systems and controls for minimizing the risks identified from the Sanctions risk assessment performed.

A vital aspect of this element is the procedures in place for **sanctions screening** for clients, their activities and transactions, as well as documenting these checks/investigations. Screening should be conducted before the establishment of a business relationship and during on-going monitoring for existing business relationships.

For **clients' screening**, it is important to note that, besides the client and/or the beneficial owners of the client, the regulated entities must also screen any other related party, including directors, authorized signatories, counterparties, etc. For **sanctions-related transaction monitoring**, it is important that screening is performed on a real-time basis (before the transaction is executed) and that all parties of the transactions are screened. Furthermore, other indicative considerations that should be made includes finding answers on whether the transaction involves a sanctioned jurisdiction or a sanctioned product/service, whether the transaction requires prior authorisation from a national competent authority, whether the transaction could facilitate sanctions circumvention, whether the transaction involves intermediaries where the final beneficiary/purpose is not clear, etc.

Please also refer to the General considerations on clients and transactions screening at the beginning of Section C.

4. Testing and auditing

An assessment of the effectiveness of the internal policies, procedures, systems and controls (as explained in point 3) should be performed periodically. If weaknesses and/or deficiencies are identified, the organisation should apply corrective measures to mitigate them.

5. Training and awareness

An effective training program should be designed for achieving the appropriate level of quality for the internal policies, procedures, systems and controls in place for Sanctions

and Restrictive Measures. The training program should be tailored to the organisation's Sanctions risk assessment, including an element for assessing the adequacy and effectiveness of staff training. In addition, clear responsibilities should be assigned to employees for sanctions-related issues.

Challenges

Various challenges might emerge in the process of implementing an effective Sanctions Compliance Program, for which the organisations should be prepared to overcome, such as:

- **Data integrity:** The screening tool should be identifying, other than exact matches, possible matches where data is misspelled, incomplete or missing and should be accommodating for linguistic differences in spelling, different dates formats, etc. In addition, the designated persons might use false or fake personal information or aliases. It is adamant that sanctions screening should be reliant on current, accurate and complete data/information (KYC/CDD).
- **Awareness of applicable Sanctions regimes/lists:** The organisation should be screening against all relevant sanctions regimes/lists on a case-by-case basis, when deciding for establishing or continuing a business relationship, or during processing transactions and/or reviewing customer due diligence (CDD) documents in the course of ongoing monitoring of business relationships.
- **Screening effectiveness:** The screening tool should be able to identify positive matches and minimize the “false positives” results. This could be achieved by including as many identifiers as possible, when screening is performed, for example names, aliases, date of birth, nationality, passport numbers, etc.
- **Screening Tool:** The entity should be assessing the technological and operational capabilities of its current screening tool in order to accommodate for the above-stated challenges and achieve optimal screening with up-to-date and reliable information.

E. USEFUL LINKS

EU Restrictive Measures

- [EU Sanctions Map](#)
- [Consolidated List of Sanctions](#)
- [Consolidated FAQs on the implementation of Council Regulation No 833/2014 and 269/2014](#)
- [European Commission - Sanctions adopted following Russia's military aggression against Ukraine](#)
- [Council of the European Union](#)
- [Official Journal of the European Union](#)
- [Common Foreign and Security Policy \(CFSP\)](#)

UN Sanctions

- [General Information](#)
- [Consolidated List of Sanctions](#)
- [United Nations Security Council Resolutions](#)
- [United Nations Office on Drugs and Crime](#)

Other

- [Ministry of Foreign Affairs website](#)
- [Ministry of Finance announcements](#)
- [Advisory Body on Financial Sanctions \(ΣΕΟΚ\)](#)
- [Unit for the Implementation of Sanctions in the Financial Sector in relation to UN Sanctions and EU Restrictive Measures](#)
- [Central Bank of Cyprus \(CBC\)](#)
- [Institute of Certified Public Accountants Cyprus \(ICPAC\)](#)
- [Cyprus Bar Association \(CBA\)](#)
- [Office of Foreign Assets Control \(OFAC\)](#)