



STEPTOE OUTSIDE COUNSEL

The Russia factor: a transformation of EU sanctions policy

The Russian invasion of Ukraine has had innumerable distressing consequences, not least for the Ukrainian people. While the rest pales in comparison to their plight, it has exacerbated inflation and a cost-of-living crisis, worsened global food shortages, and has triggered a (mostly European) energy crisis. The impact on the global geopolitical landscape has also been significant.

A notable reaction to this war has been the imposition of wide-ranging sanctions on Russia. In particular for the EU, this is unprecedented. While some other jurisdictions have imposed a similar level of sanctions, the EU sanctions on Russia are a watershed moment.

Never before have such heavy sanctions been imposed on such a key trading partner. Russia was the fifth-largest trading partner of the EU in 2021, while the EU was Russia's largest trading partner. In comparison, Russia's importance to the US economy was negligible. The impact of the EU's sanctions on Russia has therefore not only been significant for the Russian economy, but also for that of the EU.

The EU is usually not lauded for its quick and efficient decision making, in

particular regarding foreign policy. However, while the EU's appetite for additional sanctions on Russia has started to wane, the EU moved at an extraordinary pace in imposing its initial sanctions packages, acting at greater

The Russian invasion has also accelerated a process that had already started, namely an increased focus on the implementation and enforcement of EU sanctions.

speed and in far more unity than was expected by friend or foe. It should not be forgotten that the process for adopting EU sanctions is much more challenging than that of its allies, as it requires unanimity among its 27 Member States, all sovereign nations with a smorgasbord of foreign policy priorities. The EU has addressed this by finding novel ways to cushion the blow of the sanctions to national economies of Member States with closer ties to, or more dependence on, Russia, by putting in place targeted exemptions. But with cracks having

started to show in what had been a remarkable unity, there are ever-increasing calls for the system of unanimity for the adoption of sanctions to be ditched in favour of qualified majority voting.

The Russian invasion has also accelerated a process that had already started, namely an increased focus on the implementation and enforcement of EU sanctions. While in the past the enforcement of sanctions was generally not considered to be a key priority, national authorities in the EU have significantly increased their focus on sanctions enforcement. The European Commission has also made several efforts to increase coordination between the different EU Member States, for instance by setting up the "Freeze and Seize Task Force" to coordinate actions to freeze and, where applicable, confiscate assets of Russian and Belarusian oligarchs. Another example is the creation of the EU Sanctions Whistleblower Tool, through which past, ongoing, or planned EU sanctions violations can be reported (also anonymously). All of this has of course resulted in an increased compliance focus by companies, for which EU sanctions compliance was often an afterthought.

Importantly, the Russian invasion has also led to important changes in the substance of EU sanctions. The EU has started imposing standalone sanctions on certain key services, such as legal advisory services, which had in the past not been targeted. In the past, EU sanctions on services were generally limited to services linked to restricted products. The approach to EU sanctions jurisdiction has also been expanding, with an increasingly broad interpretation of what constitutes a sufficient EU nexus to trigger sanctions jurisdiction, which could, for instance, include certain euro-denominated payments. Other important examples are the introduction of the notion of "deemed exports" in the context of EU sanctions, or the facilitation of sanctions circumvention as a basis for EU sanctions designations. Many of these novel notions have been introduced through an unprecedented level of sanctions guidance issued at EU level.

While these developments are directly related to the Russian invasion of Ukraine, and have evolved in the context of the Russia sanctions, these have fundamentally transformed EU sanctions policy. Many, if not all, of these changes are here to stay. ■

About the authors:

Renato Antonini and Eva Monard are Partners and Byron Maniatis is an Associate in the Brussels office of Steptoe.

www.steptoel.com