



Asset Management & Investment Funds Update

March 2022

EU Sanctions in response to Situation in Ukraine

To date in 2022, the EU has adopted four sanctions packages in response to the developing situation in Ukraine (**2022 Sanctions Packages**). Each of the 2022 Sanctions Packages includes one or more directly effective EU Regulations which either introduce new or amend existing EU sanctions regimes (in place since 2014). The 2022 Sanctions Packages include several restrictive measures of relevance to funds and fund management companies (**FMCs**) including:

1. an **asset freeze** in respect of specified individuals, including members of the Russian Government, businesspeople and oligarchs who financially or materially support the military operations in the Ukraine, and five additional entities including three private banks, an entity responsible for disinformation and one entity which insured projects related to annexed Crimea; and
2. restrictions on access to EU capital markets for certain financial institutions which include **prohibitions on dealing in any newly issued transferable securities and money market instruments** issued by specified entities, any non-EU entity majority owned by one of the specified entities or any EU or non-EU entity acting on behalf or at the direction of one of the specified entities.

Application of EU sanctions

EU sanctions are applicable when there is EU jurisdiction (i.e., a nexus linking a certain activity to the EU) and as such EU Member State nationals and companies or other entities incorporated in an EU Member State must comply with EU sanctions and non-EU companies and persons may be subject to EU sanctions depending on their activities in the EU and their connection to any activities restricted by sanctions.

Failure to comply with EU sanctions can expose companies and individuals to fines and/or imprisonment. FMCs must, therefore, carefully consider and screen investors, investments, counterparties and their ultimate beneficial owners against applicable sanctions lists to establish that they are not under sanction. The Central Bank, in correspondence to financial service providers (**FSPs**) dated 7 March 2022, reminded FSPs (including FMCs) of their obligation to comply with applicable EU sanctions with respect to any impacted fund asset or fund investor and *"In particular, recognising that this is a complex and changing environment, the Central Bank expects Fund Service Providers to take timely action, with heightened precautions, to ensure no breaches of the sanctions occur."*

Apart from their sanctions screening obligations under the 2022 Sanctions Packages, Irish Anti-Money Laundering (AML) and Counter-Terrorist Financing (CFT) laws impose screening obligations on designated persons such as funds and FMCs. The Central Bank's AML/CFT Guidelines provide that *"Firms should have*

systems appropriate to the nature, size and risk of their business. Screening new and existing customers and payments against the relevant and up to date. EU and UN lists helps ensure that Firms will not breach the sanctions regulations. Customer screening should take place at the time of customer take-on and at regular intervals thereafter".

Key sanctions of relevance to Fund Management Companies

1. Asset Freeze

The most widely used type of EU sanction and of relevance to funds and FMCs is the asset freeze. Notably, there are separate asset freeze regulations for each sanctions regime and the EU maintains a consolidated list of persons subject to any EU asset freeze, i.e., where all funds and economic resources of the listed person that belong to, are owned, held or controlled by that person are required to be frozen. In addition, funds or economic resources, must not be made available directly or indirectly, to, or for the benefit of, the listed persons.

2022 Asset Freeze

In March 2014 and in response to threats to Ukrainian sovereignty and independence, the EU adopted sanctions which froze the assets of 21 individuals (EU 296/2014). Since then, the list of persons subject to the 2014 asset freeze has been amended and extended on numerous occasions and most significantly by the 2022 Sanctions Packages which have resulted in the assets of over 700 individuals and 53 entities being frozen. A consolidated list of persons, groups and entities subject, under EU sanctions, to an asset freeze and prohibition to make funds and economic resources available to them is accessible [here](#).

Central Bank Guidance

The Central Bank has published guidance on its website in respect of the 2022 Sanctions Packages which reiterates funds' and FMCs' obligations to carry out ongoing monitoring of transactions and customers to ensure compliance with EU sanctions. Account(s) of sanctioned persons, entities or bodies must be immediately frozen and/or transaction(s) stopped and, once reasonable steps are taken to verify the identity of the sanctioned individual or entity, a report must be submitted to the Central Bank using its Sanctions Return Form (accessible [here](#)).

2. Restrictions on Trade and Investment

EU sanctions also target specific sectors in certain countries, e.g., sanctions restricting access to the EU's capital markets for certain Russian state-owned banks and companies active in the energy and defence sectors, and their non-EU subsidiaries and any other entity (EU or non-EU) acting on their behalf or at their direction. Importantly, the sanctions prohibit dealings, directly or indirectly, with transferable securities and money market instruments issued by these targeted entities, and making, or being part of any arrangement to make, certain new loans or credit to these entities or to materially amend existing loans or credit.

2022 Restrictions on Investment

From 25 February 2022, direct or indirect dealing (purchase/sale/provision of investment services/assistance in the issuance of or otherwise dealing) is prohibited in any transferable securities and money market instruments issued after 12 April 2022 by 23 specified Russian banks and entities and any other entity (EU or non-EU) acting on their behalf or at their direction.

From 23 February 2022, direct or indirect dealing (purchase/sale/provision of investment services/assistance in the issuance of or otherwise dealing) is prohibited in transferable securities or money market instruments issued after 9 March 2022 by Russia and its government or the Central Bank of Russia or any entity acting on behalf of or at the direction of one of these entities.

The February 2022 restrictions above are in addition to those adopted in 2014 which continue to apply and include:

- *From July 2014:* restrictions on direct or indirect dealing (purchase/sale/provision of investment services/assistance in the issuance of or otherwise dealing) in transferable securities and money market instruments with a maturity >90 days issued after 1 August 2014 to 12 September 2014 by 5

specified Russian banks and entities and any other entity (EU or non-EU) acting on their behalf or at their direction.

- *From 8 September 2014:* restrictions on direct or indirect dealing (purchase/sale/provision of investment services/assistance in the issuance of or otherwise dealing) in transferable securities and money market instruments with a maturity >30 days issued after 12 September 2014 to 12 April 2022 by 11 specified Russian banks and entities and any other entity (EU or non-EU) acting on their behalf or at their direction.

Next Steps

The impact of the 2022 Sanctions Packages on asset values and market liquidity has been widely reported. In its March 2022 correspondence to FSPs, the Central Bank highlighted several key expectations of FMCs in this regard:

- ensure proper valuation of fund assets by applying fair, appropriate and consistent pricing models and valuation procedures;
- appropriately reflect any pronounced devaluations and/ or impaired ability to trade particular assets;
- continuously assess fund liquidity and factor in potential demand for investor redemptions; and
- remain open and forthcoming with the Central Bank about material issues affecting underlying funds (including the activation of certain liquidity management tools e.g., suspensions) and report breaches in the normal course.

As the situation in the Ukraine continues to evolve, the EU Commissioner for Financial Services, Financial Stability and Capital Markets Union confirmed, at [William Fry's recent ESG event](#), that "*nothing is off the table*" when it comes to further measures against Russia. Funds and FMCs must, therefore, continue to monitor EU efforts to support Ukraine and ensure timely application of appropriate processes and procedures, including in respect of screening, valuation, liquidity and regulatory reporting, in order to comply with EU sanctions and applicable legal and regulatory obligations.

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