

Advisory | **Export Controls & Economic Sanctions**



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Italian Execution of Targeted Economic Sanctions: Possible Avenues of Redress at EU and National Levels

Since March 2014, following the fall of the Ukrainian government under Viktor Yanukovich and Russia's annexation of Crimea, the EU has imposed several restrictive measures against the Russian economy, as well as against specific Russian natural and legal persons.

Beginning Feb. 23, 2022, EU sanctions were expanded in response to Russia's annexation of Ukraine's Donetsk and Luhansk regions and military aggression toward Ukraine. The EU also leveraged similar measures against Belarus, given its indirect involvement in military operations and support for Russia's invasion of Ukraine. In total, during 2022, the EU adopted six sanctions "packages" against Russia and, to a lesser extent, Belarus, as well as a specific set of compliance measures.

These measures included: (i) export limits and bans on investment and financing in a range of sectors, such as, for example, weaponry, dual-use products, technology, energy, transportation; (ii) travel bans and asset freezes against more than 1,000 individuals and over 80 entities; (iii) restrictions on trade and investment with Crimea and Sevastopol, as well as with Russian-controlled areas of the Donetsk and Luhansk regions.

On July 20, 2022, the **Council** approved a "maintenance and alignment" package aimed at avoiding circumvention and ensuring correct implementation of existing measures, as well as reducing possible consequences of EU sanctions on the global food and energy crisis.

The most recent set of measures include, *inter alia*: (i) import ban on Russian gold and jewelry; (ii) expansion of the list of controlled goods in the defense and technology sectors (e.g., components for “fracking” and nuclear industry); (iii) prohibition on accepting deposits from entities established in third countries and majority-owned by Russian citizens/residents and prior authorization of acceptance of deposits for non-prohibited cross-border trade; (iv) expansion of the list of sanctioned persons and of reporting obligations; (v) exemption on the prohibition to enter into transactions with Russian state-owned entities necessary to ensure access to judicial, administrative or arbitral proceedings.

Measures addressing the global food and health crisis include exemptions for third countries on trade with certain Russian state-owned entities relating to agricultural products and oil, as well as exemptions on transactions aimed at importing pharmaceutical products and medical devices from Russia to third countries.

On July 26, 2022, the Council decided to prolong the existing restrictive measures, targeting specific sectors of the economy of the Russian Federation by six months, until Jan. 31, 2023.

As has been the case in the past, the EU’s economic sanctions in recent months have generated litigation before the relevant courts by those targeted by such sanctions. This GT Advisory outlines the legal bases and procedures for the adoption of targeted sanctions, as well as the possible remedies available in the EU legal system for those wishing to challenge targeted sanctions imposed against them. It also describes the Italian regulation for international sanctions and the remedies available at the national level.

I. Legal bases and procedures for the adoption of EU sanctions

The EU Treaties define a procedure for issuing economic sanctions that requires Council adoption of a Common Foreign and Security Policy (CFSP) decision under Article 29 of the Treaty of the European Union (TEU), followed by a Council regulation on a joint proposal by the CFSP High Representative and the Commission, under Article 215 of the Treaty on the Functioning of the European Union (TFEU). The European Parliament is informed of the regulation’s adoption, which the Council approves by qualified majority. In contrast, Article 31 of the TEU provides, as a general rule, that the Council must approve the CFSP decision unanimously.

Member States implement CFSP decision measures, such as arms embargoes or travel restrictions. Persons and entities subject to targeted sanctions such as asset freezes or travel restrictions (included in a special list accompanying Council regulations) are informed of the measures taken against them, either individually by letter (if their address is available) or by a notice the Council publishes in the “C” series of the Official Journal of the European Union.

II. Review of list-based sanctions and remedies at the EU level

Existing EU restrictive measures are reviewed periodically (at least annually) to ensure they continue contributing to their aim. With regard to EU economic sanctions, Council decisions are limited in duration, usually for a period of 12 months, and can be renewed without limit, while corresponding Council regulations have no expiration date. Before deciding to extend a Council decision, the Council reviews the restrictive measures and at any time may decide to modify, extend, or temporarily suspend them.

Regarding the remedies available at the EU level, persons and entities targeted by EU sanctions may first submit a request to the Council, together with supporting documents, for a review of the decision that

includes them on the list of sanctioned entities. The request for review should be addressed to the General Secretariat of the Council, DG C Coordination Unit, Rue de la Loi 175, B-1048 Brussels.

Second, within two months from the adoption of the Council act, sanctions imposed by the Council against natural or legal persons may be appealed by the persons “directly and individually” affected by the measures before the General Court of the European Union, on the basis of Articles 275(2) and 263(4)(6) TFEU. The General Court can annul the contested measures, including the CFSP Decision, and rule on claims for damages arising from the adoption of restrictive CFSP measures. The General Court’s judgment can be appealed to the Court of Justice.

In addition, the Court of Justice recently affirmed its jurisdiction with regard to preliminary references from national courts regarding CFSP decisions on international sanctions; thus, the Court of Justice can review their validity under EU law pursuant to Article 275(2) TFEU (*Rosneft*, C-72/15).

III. Legal actions against EU sanctions in the context of the Russia - Ukraine conflict

Since 2014, numerous individuals have initiated annulment actions before the General Court regarding economic sanctions the Council imposed in the context of the Russia-Ukraine conflict. By September 2020, the EU Courts had issued nearly 40 judgments concerning Ukrainian citizens and 12 judgments concerning Russian citizens. Most of the sanctions concerning Russian citizens were upheld, while most of the measures against Ukrainian citizens were annulled (28 annulments in 32 cases, as of September 2020). One of the main reasons for the annulment was the lack of adequate motivation of the measures, contrary to Article 296(2) TFEU, as previously ruled in the General Court’s *Ben Ali* case (T-200/14).

Additional appeal proceedings before the EU General Court were initiated in 2022, following adoption of increasing sanctions against Russian and Belarusian citizens and legal entities, by so-called “oligarchs” (including Roman Abramovich, Mikhail Fridman, and Alisher Usmanov) and other Russian citizens.

IV. Italian legislation on international economic sanctions

At the national level, with Legislative Decree No. 109 of June 22, 2007 (Sanctions Decree), Italy adopted its own legislation on sanctions to counter terrorism financing and the activities of countries that threaten international peace and security. The Sanctions Decree establishes the general framework for Italian authorities to execute UN or EU economic sanctions, which are directly applicable in the national legal order, and provides the Italian government with autonomous sanctioning power, pending the adoption of supranational measures (Articles 4 and 4bis Sanctions Decree).

The sanctions Italy imposes “autonomously” are issued by a Ministry of Economy and Finance (MEF) decree, upon the proposal of the Financial Security Committee (FSC), and have a duration of six months, renewable with no maximum duration. They cease to take effect when the supranational measures are adopted. The measures can be ordered against individuals or legal entities that “*engage in or attempt to engage in one or more conducts with the purpose of terrorism as provided by criminal laws, one or more conducts aimed at financing programs for the proliferation of weapons of mass destruction, or one or more conducts that threaten international peace or security*” (Article 4bis, Sanctions Decree).

FSC can also make proposals for the designation of individuals or entities to the UN and EU bodies. The procedure does not allow an individual or entity to participate or defend themselves before being added to the lists. Instead, the FSC (through the Special Currency Police Unit of the Financial Police, *i.e.*, *Guardia di Finanza*) notifies the relevant party of inclusion on the lists, pursuant to Articles 137 *et seq.* of the Civil Code and Articles 3bis, 45 and 48 of Legislative Decree No. 82 of March 7, 2005.

As for compliance, the violation of asset freezing measures or restrictions ordered by EU regulations (under Article 215 TFEU) is subject to a fine between 5,000 and 500,000 euros, unless it is prosecuted under criminal law. Reporting requirement violations will result in a fine of between 500 euros and 25,000 euros.

These fines are imposed in accordance with the procedure set forth in Article 13quater, Sanctions Decree, which largely mirrors the provisions of Law No. 689/1981 on administrative fines, to which it refers for every aspect not otherwise regulated in the Sanctions Decree. In short, various entities, including public administrations and the Financial Police, can ascertain the abovementioned violations by notifying the fine to the interested party, pursuant to Article 14, Law No. 689/1981. The notice is transmitted to the MEF, to which the interested party may submit defensive writings and documents, as well as requests for a hearing. The MEF, within two years of receipt of the notice, by reasoned decree, establishes the amount of the fine and orders its payment, notifying the decree to the interested party, in accordance with the provisions of Article 18, of Law no. 689/1981, as well as Articles 137 *et seq.*, Civil Procedure Code and Articles 3bis, 45 and 48 of Legislative Decree No. 82 of March 7, 2005.

V. Review of sanctions and remedies at the national level

Like in the EU, the FSC periodically reviews and updates the position of individuals affected by restrictive measures listed in UN, EU, or national sanction lists, based on the principles and criteria provided in the relevant regulations (Article 4quinquies, paragraph 4, Sanctions Decree). The FSC may propose to the UN Sanctions Committee or to the Council, either on its own initiative or following a request by the interested party, to remove individuals or entities from international or EU lists (Article 4sexies, paragraph 1, Sanctions Decree).

In addition, the interested party listed by the MEF, pending the adoption of supranational acts, may request to the FSC its deletion from national lists (Article 4sexies, paragraph 3, Sanctions Decree).

The Sanctions Decree does not expressly provide any way to appeal the MEF's decree listing a person or a legal entity, pending the adoption of supranational acts. An appeal against such a measure could, therefore, be brought before the administrative court, in accordance with general principles on jurisdiction under Italian law. In particular, under Article 13, paragraph 3, Legislative Decree 104/2010, the Administrative Regional Tribunal of Lazio (seat of Rome) would be competent on such an appeal.

Finally, the Sanctions Decree expressly provides that against the reasoned decree of the MEF referred to in Article 13quater, paragraph 6, Sanctions Decree (mentioned in point IV. Above)—which imposes a fine for the violation of the obligations of freezing and unavailability of assets or for the violation of the reporting obligations—an opposition could be filed before the Court of Rome, which is exclusively competent on such claim, pursuant to Article 14, Sanctions Decree.

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