

## News Alert

June 2022

### **Update: 6th EU Sanctions Package and Trusts Connected to Russian Persons – Major Impact on Wealth Management Industry and Clients**

#### **Key Takeaway**

A further EU Regulation on sanctions adopted on June 3 reflects the inherent difficulty in the withdrawal by EU-connected service providers servicing relationships with trusts and similar legal arrangements with settlors or beneficiaries connected to Russia. Generally, the new Regulation extends the period of time to exit such transactions and provides for a number of new exemptions. In addition, it introduces new restrictions on the provision of consulting services that mirror the recent US sanctions against persons located in Russia. See our alert [here](#).

The Swiss Federal Council has also announced that it would adopt the sanctions package under the new Regulation and will revise the Swiss Ordinance on Measures in Connection with the Situation in Ukraine. For more information regarding the Swiss implementation of such measures, see our post [here](#).

Swiss and EU-connected service providers of trustee or other fiduciary and related services should stay abreast of these and subsequent developments so they know how they are affected. Conflicts could emerge between their sanctions-related compliance and their fiduciary obligations. While some exemptions may apply, providers must carefully navigate compliance with specific requirements to prevent violations of the sanctions measures.

#### **Background**

On 8 April 2022, the EU published a Regulation with respect to Russia which prohibits many transactions between trusts connected to Russian persons and service providers connected to the EU. That Regulation, Council Regulation (EU) 2022/576 ( “EU Regulation” or “Regulation”) regarding Russia-related sanctions which included specific measures for Russian-connected trusts, came into effect on 9 April 2022. Among other measures, the Regulation prohibits certain services by EU service providers for trusts with trustors (i.e. settlors) or beneficiaries with connections to Russia. The Regulation amended Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine, as already amended by other recent EU Regulations on Russia-related sanctions. See our alert [here](#).

The Regulation targets persons generally connected to Russia. It prohibits acting as a trustee or in a similar capacity for trusts or a similar legal arrangement connected to a Russian settlor or beneficiary, or to provide other trust, legal and business services to trusts connected to such persons. It required providers of “management services” to such persons connected with Russia to wind down prohibited activities by 10 May 2022. Also, as of that date, the prohibition was set





to extend to acting, or arranging for another person to act, as a trustee, nominee shareholder, director, secretary or a similar position, for such trusts.

The Swiss government implemented similar restrictions shortly thereafter, and the US created its own restrictions on trusts.

## Recent Developments

On 3 June 2022, the EU adopted Council Regulation (EU) 2022/879 (“Second Regulation”) as part of a 6th sanctions package against Russia. The Second Regulation also amends Regulation (EU) No 833/2014, as already amended by other recent EU Regulations on Russia-related sanctions.

Generally, the Second Regulation refines the measures imposed on trusts and provides the opportunity to Member States to grant additional exemptions in addition to those laid down in the original provisions of the Regulation. In addition, it limits access to professional services from EU persons for entities established in Russia.

### 1. Extension of Time to Implement Additional Prohibitions

Originally, 10 May 2022 was the date set when the scope of prohibitions against EU service providers would extend to acting, or arranging for another person to act, as a trustee, nominee shareholder, director, secretary or a similar position, for a trust or similar legal arrangement connected to a Russian person. A Russian person for purposes of these restrictions includes:

1. Individual Russian nationals or residents
2. Legal persons, entities or bodies established in Russia
3. Legal persons, entities or bodies owned directly or indirectly more than 50% by a Russian person (individual or legal person)
4. Legal persons, entities, or bodies controlled by a person (individual or legal) under categories 1-3 above, and
5. An individual or legal person, entity or body acting on behalf or at the direction of a person (individual or legal) under categories 1-4 above.

Under the Second Regulation, the implementation date for such expanded scope of prohibited activities has now been pushed back to 5 July 2022. This was in response to numerous comments from service providers and others in the wealth management industry noting the difficulties with limiting or exiting existing relationships within the initially proposed time frame.

### 2. Extension of Wind-Down Period of Core Prohibitions

In addition, the Second Regulation extends from 10 May 2022 to 5 July 2022 the deadline for EU service providers to exit non-compliant transactions where they are providing certain administrative or management services to a trust or similar legal arrangement to a Russia-connected person. The continued servicing of such contracts is permitted until that date where the contracts were concluded before 9 April 2022, to permit a transition period for implementation of the new rules. Again, the deadline was extended in response to overwhelming industry responses noting that the initially proposed time frame would not be adequate to permit exiting such relationships without violating contractual obligations.



### 3. New Exemptions & Notification to EU Commission

Further, the Second Regulation adds a new provision (Paragraph 5) regarding the application of exemptions to the above prohibitions. The new provision does not refine existing exemptions, but rather adds new exemptions to the Regulation. The new provision empowers the competent authorities of the EU Member States to authorize certain prohibited services discussed above beyond 5 July 2022 in the following limited circumstances:

1. to complete by 5 September 2022 operations strictly necessary for the termination of contracts which are not compliant with the Regulation concluded before 9 April 2022 or of ancillary contracts necessary for the execution of such contracts; or
2. for other reasons, provided EU service providers do not accept from or make available to Russia-connected persons any funds or economic resources, directly or indirectly, or otherwise provide such persons any benefit from assets placed in a trust.

Regarding the first exemption, the Second Regulation does not specify what is considered “necessary” in this context. Service providers and clients alike are awaiting further national guidance as to the scope of what may be deemed necessary. The Second Regulation text contains the limitation that the operations be necessary “for the termination” of the relevant contracts. Presumably this would include servicing the contractual relationship at least to the extent needed to prevent some other violation of law. However, it is not clear to what extent the provision would protect against mere contractual claims, i.e. early termination not specifically contemplated under the termination provisions of the contract. Providers should carefully review relevant agreements in conjunction with the new exemption to determine their options.

The second exemption leaves substantially more room for continuing to service such relationships, at least where there are options to exclude Russia-connected persons from economic benefits of trust structures. It remains to be seen, however, whether and how existing relationships may be modified to accommodate the exemption. For example, as reported in the media, some high-profile sanctioned individuals have restructured trusts and company structures in ways at least perceived as preventing benefits to them. Member State authorities will have to continue looking closely at such restructuring arrangements and under what parameters they are to be respected for application of this exemption. Of course any new funds or relationships where economic settlors are specified persons would not qualify.

The Second Regulation introduces a third exemption (Paragraph 5) which empowers the competent authorities of the EU Member States to authorize the prohibited services discussed above if they determine it is necessary for:

3. the operation of trusts whose purpose is the administration of occupational schemes, insurance policies or employee share scheme, charities, amateur sports clubs, and funds for minors or vulnerable adults.

It should be noted that EU case law and guidance show that exemptions in general should be interpreted and applied narrowly, and companies can expect a high level of scrutiny from the competent authorities of the EU Member States to the extent that an exemption is applied for. Member States are now required to inform the EU Commission within two weeks of an exemption authorization.



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#### 4. New Restrictions on Provision of Services to Entities in Russia

Also, the Second Regulation introduces prohibitions against providing, directly or indirectly, accounting, auditing, including statutory audit, bookkeeping or tax consulting services, or business and management consulting or public relations services to legal persons established in Russia, effective immediately. However, similar to the provisions above, the Second Regulation provides an exemption for such services in the following limited circumstances:

1. to provide services strictly necessary for the termination by 5 July 2022 of contracts which are not compliant with the Regulation concluded before 4 July 2022 or of ancillary contracts necessary for the execution of such contracts;
2. to provide services strictly necessary for the exercise of a right of defence in judicial proceedings and the right to an effective legal remedy;
3. to provide services intended for the exclusive use of legal persons established in Russia that are owned by, or solely or jointly controlled by, a legal person which is organized in an EU Member State.

Here, too, the Second Regulation does not specify what is considered “necessary”.

Unlike the US rules, EU persons providing such consulting services solely to individuals residing in Russia would not necessarily trigger the EU services prohibitions.

#### 5. Swiss Adoption of Sanctions Package

The Swiss Federal Council announced on 10 June 2022 that Switzerland will adopt the measures introduced by the EU in its sixth sanctions package, including the restrictions on consulting services to entities established in Russia. See our blog post here. As with previous acts by the Swiss government, although the EU measures will likely be adopted in full, there will likely be space for nuanced interpretation of similar, or even identical, measures.

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