

## ANAVE – Circular de Régimen Interior

Madrid, 20 de abril de 2022

Ref: Varios 30/2022/AB

### Asunto: **Crisis Rusia-Ucrania**: documentos de ‘preguntas frecuentes’ de la Comisión Europea sobre las sanciones impuestas a Rusia

Muy Srs. nuestros:

Como continuación de la publicación del 5º paquete de sanciones contra Rusia el pasado 8 de abril, del que les informamos en nuestra circular de referencia [Varios 29/2022/AB](#), la Comisión Europea ha publicado esta semana **dos documentos de ‘preguntas frecuentes’** sobre la interpretación de las sanciones impuestas por la UE contra Rusia.

En concreto, el [primer documento](#) se refiere a las restricciones a la exportación de productos y tecnología para la navegación marítima, y el [segundo](#) trata sobre preguntas de carácter general.

Asimismo, les adjuntamos en un **Anexo dos presentaciones**, recibidas a través del Foro Europeo de Servicios, sobre las **medidas de respuesta de Rusia** a las restricciones a la exportación impuestas y las contra-sanciones a las restricciones monetarias y de capital.

Muy atentamente,

Elena Seco  
Directora General

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# Russian counter-sanctions: overview of currency and capitals restrictions

April 7, 2022

ALRUD



# Existing legal framework



- **Presidential Decree No. 126 dated March 18, 2022** “On Additional Temporary Economic Measures to Ensure Financial Stability of the Russian Federation in the Field of Currency Regulation”.
- **Extract from the Minutes of Meeting of the Sub-commission of the Government Commission for Control over Foreign Investments in Russia No. 7** dated March 10, 2022.
- **CBR Official Explanation No. 2-OP** dated March 18, 2022.
- **Decision of the CBR Board of Directors** dated April 1, 2022.
- **Federal laws:** No. 127-FZ dated June 4, 2018 (grounds for imposing restrictive measures), No. 272-FZ dated December 28, 2012 (personal sanctions), No. 32-FZ dated March 4, 2022 (criminal and administrative liability).
- **Presidential Decrees** No. 79 dated February 28, 2022 (currency operations), No. 81 dated March 1, 2022 (regulated operations and transactions), No. 95 dated March 5, 2022 (procedure for fulfillment of obligations to certain foreign creditors), No. 100 dated March 8, 2022 (export bans and restrictions).
- **Decrees of the Russian Government:** No. 295 dated March 06, 2022 (the procedure for issuing permits by the Government Commission), No. 311, 312, 313 dated March 9, 2022 (the list of goods prohibited / restricted to export).
- **Minutes of the Meetings of the Sub-Commission of the Government Commission for the Control of Foreign Investment in the Russian Federation** No. 5 dated March 9, 2022, No. 7 dated March 10, 2022, No. 12 dated March 17, 2022.
- **CBR Prescriptions:** No. 018-34-3/1202 dated February 28, 2022, No. IN-019-12/21DSP dated March 01, 2022.
- **Decisions of the CBR Board of Directors** dated March 8, 2022, March 18, 2022.

# | Application of existing regulations

Lack of **clear understanding of the hierarchy** of normative acts

Poor legislative technic and lack of clarity – **risks of interpretation and application**

**Conservative approach** to the interpretation of statutory acts

Ascertaining **intention of the legislature** *versus* **literal interpretation**

The Sub-commission grants permits to an unlimited number of people, which may result in **exceptions to the general rules and/or limitations**

The number of requests submitted **many times exceeds** the number of responses issued

# Key terms and definitions

- **“Unfriendly” States** – the USA, the member states of European Union, Canada, Great Britain and other foreign states imposing unilateral sanctions or other restrictions against Russia, Russian citizens and legal entities.
- **“Friendly” States** – all other foreign states not included in the list of “Unfriendly” States.
- **Resident** – (i) Russian citizens; (ii) foreign citizens and stateless individuals permanently residing in Russia based on a residence permit; (iii) legal entities established in Russia (except for foreign legal entities registered in accordance with the Federal Law “On International Companies and International Funds”), branches, representative offices and other subdivisions of such legal entities located outside Russia. **NB!** Russian citizen who also has other citizenship is considered as Resident.
- **Non-resident** – foreign legal entities and individuals not classified as Residents.
- **Controlled Person** – Resident under control of the foreign person associated with the Unfriendly States, regardless of the place of their registration/ place of predominant economic activity.
- **Sub-commission** – Sub-commission of the Government Commission for the Control of Foreign Investments.

# Provision of loans by Russian residents



## Subject to prior Sub-commission permit:

- Loans in RUB from Residents to Non-residents from Unfriendly States;
- Loans in foreign currency ("FC") from Residents to Non-residents.



## Allowed:

- Loans in RUB from Residents to Controlled Persons/ Non-residents from Friendly States/Residents;
- Loans in RUB/FC from Non-residents from Friendly/Unfriendly States to Residents.

**NB!** Parties may restructure the foreign currency loans provided by Resident before March 1, 2022 without prior approval.

# Repayment of loans/ other financial instruments and other capital transfers by Residents and Non-residents



## Loan repayments allowed:

- in RUB by any person to Residents;
- in FC by Non-residents of Friendly/Unfriendly States to Residents;
- in RUB/FC by Residents to Non-residents of Friendly States (*may be restricted in practice - CBR letter 06.03.2022*);
- in FC by Residents to Non-residents of Unfriendly States **not exceeding** 10 mln RUB/its equivalent in FC per month (*may be restricted in practice*).

**NB!** Credit, loan and other financial instruments repayments **exceeding** 10 mln RUB/its equivalent in FC per month – to be carried out through **ruble “C”-type account**. Otherwise, subject to prior **permission of CBR / Ministry of Finance**.

**NB!** The money on the “C”-type account are limited in use.



## Capital transfers subject to CBR’s permit:

- Resident’s payment for participatory share (LLCs), contribution, equity interest in the property (authorized or capital, cooperative interest fund) of **Non-resident legal entity** (*do not apply to transactions on stock-exchange*);
- Resident’s contribution to Non-resident under the general partnership or JV agreement (**JV agreement**).

**NB!** Formally, there are no restrictions on payment dividends by Residents (incl. JSC) to Non-residents (but there are practical problems with transfer).

# Other FC control issues (1)

## Allowed FC operations:

- Residents can transfer FC to the foreign accounts for **financing on-going activity of branches and representative offices** in the amount not exceeding the financing for the preceding year;
- Non-residents can credit FC to the foreign accounts (deposits) of individual Residents in a form of **wage, rent, coupons, dividends on securities and other interest payments**;
- Individual Resident can carry out FC transfers from a foreign account opened before March 1, 2022 to another one, provided the information about such accounts is **disclosed** to the Russian tax authorities.

## Limitations of monthly FC transfers outside Russia

- **Subjected individuals:** Residents; Non-residents from Friendly States; Non-residents from Unfriendly States working in Russia under labor or civil law contracts.
- Individual can transfer outside Russia no more than **10,000 USD/equivalent** to the foreign account of another individual or his/her own account abroad. Threshold for e-wallets – **5,000 USD/equivalent**.
- Other operations proceeded through Russian bank accounts or accounts of Russian brokers are suspended for 6 months since April 1, 2022: **(i)** when individual Non-residents from Unfriendly States do not work in Russia under labor or civil law contracts; **(ii)** the operation is proceeded by Non-resident individual or legal entity from Unfriendly State through the account of a Russian broker.

# Other FC control issues (2)

## Purchasing of FC in Russia

- Non-resident legal entities from the Unfriendly States **cannot purchase FC** on the Russian currency market.

## Foreign exchange earnings

- **80% of foreign currency** received under **foreign trade contracts (export of goods or services)** concluded with Non-residents since January 1, 2022 – to be sold by Resident within 3 (three) business days from the date of crediting of foreign currency to the Resident's account.

## Advance payments

As a general rule, advance payment made by Resident in favour of Non-resident **cannot exceed 30%** of total price under:

- services contracts, where a Non-Resident is a service provider;
- contracts for performance of works by a Non-resident, transfer of information and results of intellectual activity by a Non-resident, including exclusive rights to them.

# M&A deals: regulated transactions

Residents

**AND**

foreign persons associated with Unfriendly States **or**

Controlled Persons



**NB!** The rules also apply to the transactions implying acquisition of securities from a foreign person from Friendly State, but one who **obtained such assets from a person from the Unfriendly State** after February 22, 2022.

**Russia**

Transactions with **securities (including shares in JSC)** require approval of the Sub-commission.

Transactions with **participatory interests in LLC** are not limited.



**Foreign countries**

Not limited – transactions with **securities**, the title to which is accounted, and which are stored **outside Russia** **and settlements on transactions** are carried out on accounts opened by Residents in foreign financial organizations, which are disclosed to the Russian tax authorities.

**Others** – require Sub-commission approval.

# M&A deals: exceptions

Permits are **NOT required** for:

- **conversion of depositary receipts for shares** of a Russian issuer into shares of a Russian issuer, provided that the shares will be credited to the depo account of the said receipts' holder;
- transactions made in connection with the transfer of securities by a person from the Unfriendly States who has a title to the securities and performed all actions related thereto **for the benefit of a person whom the securities are transferred to** (e.g. return from a trust / a broker as a title holder);
- transfer of securities **without transfer of title** to them;
- operations performed **outside the will** of the person exercising rights to securities (execution of court judgments, conversion of securities by the obligor, etc.);
- debiting of securities from a **nominee holder's depo account** and transfer to another one;
- transactions with "**special foreign persons**", aimed at both acquisition by Residents and the alienation by them of securities. *No official definition of such persons is given, we assume this term means Non-residents from Unfriendly States controlled by Residents.*

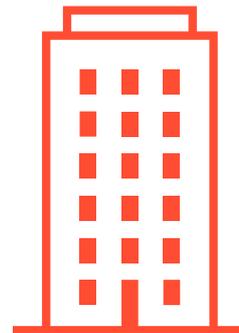


# Real estate transactions

As a general rule, the conclusion **and execution** of transactions resulting in obtaining of **real estate title** between Residents and **persons from the Unfriendly States** require prior approval by the Sub-commission.

Permits are **NOT required** for:

- **transfer** of real estate objects to **individuals from Unfriendly States**;
- **purchase** of real estate objects from **individuals from Unfriendly States** with payment through **“C”-type account**;
- shared construction agreements;
- real estate objects located **outside Russia** **and** settlements on transactions with such real estate objects carried out on **accounts opened by Residents in foreign financial organizations**, information about which is disclosed to the Russian tax authorities;
- transactions involved **“special foreign persons”**, aimed at both acquisition by Residents and the alienation by them of real estate.



# Work of the Sub-commission

**Authority** - Sub-commission.

**Applicant** - Resident or individual from Unfriendly States.

**The content** of the application must comply with the requirements of Decree No. 295.

**Application form** - free, in paper / in digital (e-signature).

There is no **time limit for consideration** of applications, BUT the meetings of the Sub-commission are held daily, in one meeting no more than 10 applications are considered in order of priority.

## **The final decision:**

- permit of the Sub-commission (conditional/unconditional, with/without expiration date);
- refusal to issue a permit by the Sub-commission.

**NB!** The Sub-commission is already **actively operating** and issuing permits / refusals.



# Lack of permits - consequences of breaches

- State authorities have not yet issued clarifications on the consequences of permit violations in the procedure for approving operations and transactions and there have been no precedents so far, but we consider that the transactions will be considered **as void** or **voidable** (upon claims of the respectful persons).
- Void transactions with **mutual restitution** (Article 168 or 173.1 or 174.1 of the Civil Code).
- Risk of application of Article 169 of the Civil Code (contradictory to basic principals of public order) **with forfeiture of assets to the treasury.**



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# Russian export restrictions

Alexander Bychkov | April 2022



# Machinery, equipment, vehicles and IT products

	Government Decree No. 311	Government Decree No. 312
Measure	Temporary export ban outside Russia	Export Permit for supplies to the EAEU
Validity	Until 31 December 2022	
Products	<ul style="list-style-type: none"><li>• machinery, vehicles, technological, telecommunication, medical, electrical equipment, IT products etc.</li></ul> All goods are classified by customs classification (“HS”) codes	
Exemptions	<ul style="list-style-type: none"><li>• goods originating from Russia and covered by ST-1 or other types of certificates of origin</li><li>• goods in transit/international means of transportation</li><li>• goods exported by individuals for personal use</li><li>• goods exported to the EAEU (under an export permit)</li><li>• supplies to Belarus, so-called Abkhazia and South Ossetia and so-called LNR and DNR</li><li>• goods previously imported into Russia using the Carnet ATA</li><li>• spare parts and special equipment temporarily exported for maintenance, etc.</li></ul>	
Export license	An export permit to supply the products to the EAEU countries based on the following key requirements: <ul style="list-style-type: none"><li>• the actual purpose of the exportation from Russia</li><li>• the possibility to manufacture and/or acquire in Russia (or countries not restricting trade with Russia) the same/identical equipment</li><li>• the absence of critical shortage of the exported goods in Russia</li><li>• (a copy of foreign trade contract would be required)</li></ul>	

# Timber, chemicals and materials

	Government Decree No. 313
<b>Measure</b>	Temporary export ban outside Russia
<b>Validity</b>	Until 31 December 2022
<b>Products</b>	<ul style="list-style-type: none"><li>• wood</li><li>• timber</li><li>• waste and scrap steel, etc.</li></ul>
<b>Exemptions</b>	<ul style="list-style-type: none"><li>• goods in transit</li><li>• goods exported by individuals for personal use</li><li>• goods exported to military units of Russia</li><li>• goods exported for use on Spitsbergen, etc.</li></ul>
<b>Export license</b>	Not allowed

# Food products, cereals and fertilizers

	Government Decree No. 361	Government Decree No. 362	Government Decree No. 529
<b>Measure</b>	Temporary export ban outside Russia		
<b>Validity</b>	Until 31 August 2022	Until 30 June 2022	Until 31 August 2022
<b>Products</b>	<ul style="list-style-type: none"> <li>white sugar</li> <li>raw cane sugar</li> </ul>	<ul style="list-style-type: none"> <li>grain crops (wheat and meslin, rye, barley and corn)</li> </ul>	<ul style="list-style-type: none"> <li>rapeseed and sunflower seeds</li> </ul>
<b>Exemptions</b>	<ul style="list-style-type: none"> <li>goods in transit</li> <li>goods exported to military units of Russia</li> <li>goods exported for use on Spitsbergen and at Baikonur</li> <li>goods exported to Belarus, etc.</li> </ul>		<ul style="list-style-type: none"> <li>goods in transit</li> <li>goods exported to military units of Russia</li> <li>goods exported to the EAEU, etc.</li> </ul>
<b>Export license</b>	<ul style="list-style-type: none"> <li>special export permit of the Ministry of Agriculture for exportation to the EAEU</li> <li>of white sugar (HS code 1701.99.100)</li> </ul>	<ul style="list-style-type: none"> <li>one-shot license is issued by the Ministry of Industry and Trade for export all above-listed goods outside the EAEU</li> <li>one-time permit is issued by the Ministry of Agriculture for export of wheat and meslin seed, rye seed and corn seed</li> </ul>	N/A

# Practical issues

- If the goods were temporarily imported or leased and the lease expires:
  - There are no exceptions for such cases. A practical option would be to try apply to the Government, the Ministry of economic development, the Ministry of Finance and other competent bodies. The application shall explain and justify the needs to return the goods. No guarantee of success.
- Exportation through Belarus or other EAEU member states:
  - An attempt to the transfer the goods to another EAEU country (under an export permit set out in Decree No. 312) for subsequent exportation outside the EAEU could be viewed as a circumvention of the export restrictions and could result in the imposition of penalties on the Russian exporter.
  - Currently, the Russian legislation does not establish any special penalties for violation of Decrees Nos. 311/312/313/361/362/529.

# Potential penalties

- Article 16.3 of the Russian Code on Administrative Violations:
  - penalties for customs violation of statutory prohibitions and limitations.
  - a fine of RUB 300,000 (approx. USD 3,500) with possible confiscation of illegally transferred goods. Responsible employees could be subject to an administrative fine of up to RUB 20,000 (approx. USD 230).
  - The statute of limitation: 2 years.
- Article 171 of the Russian Criminal Code:
  - performance of business activity without a special authorization/license if such is required *per se* (only individuals can be held criminally liable in Russia).
  - up to 5 years of imprisonment, or a fine of up to RUB 500,000 (approx. USD 6.000).
  - The statute of limitation: 2 - 6 years (depending on the gravity of crime).

# Aspects to consider



## Purpose of the new restrictions

To prevent physical exportation of essential goods from Russia to protect the economy



## What to do with temporarily imported equipment/leased products?

Potentially, apply to governmental bodies



## Exportation through the EAEU countries is unlikely allowed

Possible penalties for circumvention

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