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Sanctions against Russia – what you need to know

Date	Wednesday 30 March 2022
Time	6.00pm to 7.00pm
Venue	Online Webinar with Live O&A Sessions
CPD Hrs	1hrs General (by eLearning)
	Total: 1 Hours (by eLearning)

Chairperson

Cormac Little, Partner, William Fry.

Cormac is head of William Fry's Competition & Regulation department and a member of the Law Society's FATF & AML Task Force. He is listed in Band 1 in Chambers Europe 2018 and as a Leading Individual by the Legal 500 EMEA 2018.

Speakers

John Binns, BCL Solicitors LLP. John Binns is a specialist in proceeds of crime laws, cannabis regulation, sanctions, and tax investigations. He has extensive experience in financial crime, which also involves bribery and corruption, extradition, Interpol, fraud, market abuse, and the conduct of related civil proceedings. He is a prolific writer and speaker on a variety of topics.

Paul Egan SC, Mason Hayes & Curran LLP. Paul Egan SC is a senior consultant with Mason Hayes & Curran LLP and Chair of the Company Law Review Group, practising in company law and transactional matters. Paul is a member of Council and the Finance Committee and Chair of the Audit Subcommittee.

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NB Note re CPD Scheme:

It is each solicitor's own responsibility to maintain a CPD record and to retain proof of the CPD he/she completes. The Scheme is regulated by the Law Society of Ireland and each year a random audit is conducted where a solicitor may be asked to produce a record and/or proof of the CPD they completed. For further queries on the Scheme please visit the members' area of the website www.lawsociety.ie.

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Irish and EU Restrictive measures affecting Russia

Paul Egan



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Irish and EU Restrictive Measures Affecting Russia

Paul Egan SC • 30 March 2022

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Restrictive Measures

- EU Regulations
 - Enforced by Irish SIs
- Irish Statute
 - Scope extended by SIs
- UK and USA measures

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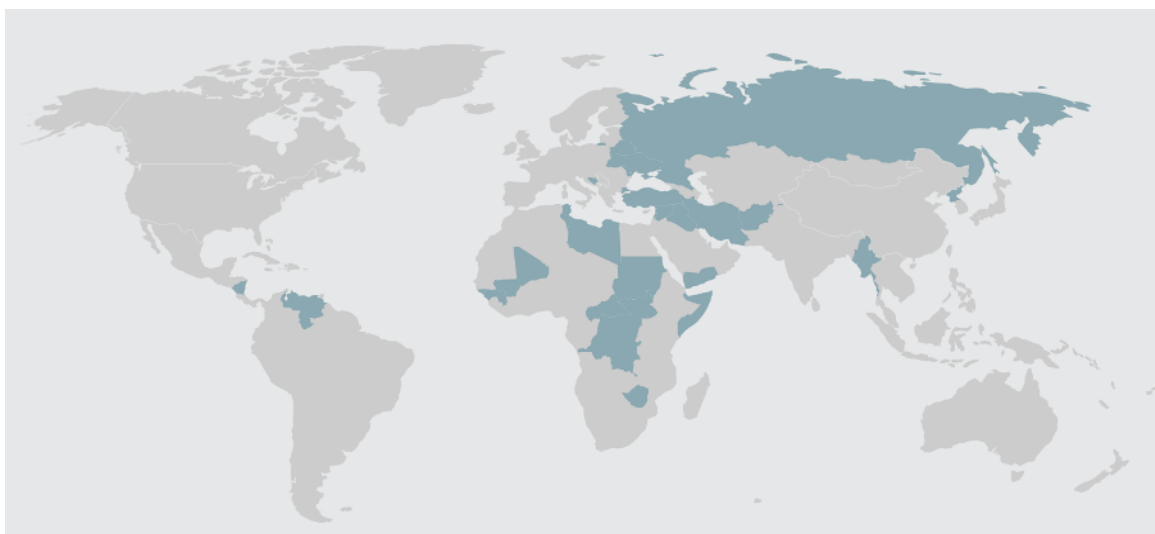
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EU Restrictive Measures

Asia	Africa	Americas	Europe
Afghanistan	Burundi	Haiti	Belarus
China	Central African Republic	Nicaragua	Bosnia & Herzegovina
Iran	Democratic Rep. Congo	United States	Moldova
Iraq	Guinea	Venezuela	Montenegro
Lebanon	Guinea-Bissau		Russia
Myanmar (Burma)	Libya		Serbia
North Korea	Mali		Turkey
Syria	Somalia		Ukraine
Yemen	South Sudan		
	Sudan		
	Tunisia		
	Zimbabwe		

EU Restrictive Measures



EU Decision → EU Regulation → Irish SI

[S.I. No. 81/2022 - European Union \(Restrictive Measures concerning Ukraine\) Regulations 2022](#)

..... Ukraine) Regulations 2022. 2. (1) In these Regulations Council Regulation (EU) No. 208/2014 means Council Regulation (EU) No. 208/2014 of 5 March 2014 as amended by the European acts specified in Part 1 of Schedule 1; Council Regulation (EU)

[S.I. No. 82/2022 - European Union \(Restrictive Measures concerning Ukraine\) \(No.2\) Regulations 2022](#)

..... Ukraine) (No.2) Regulations 2022. 2. (1) In these Regulations Council Regulation (EU) No. 208/2014 means Council Regulation (EU) No. 208/2014 of 5 March 2014 as amended by the European acts specified in Part 1 of Schedule 1; Council Regulation

[S.I. No. 90/2022 - European Union \(Restrictive Measures Concerning Ukraine\) \(No.3\) Regulations 2022](#)

..... Ukraine) (No.3) Regulations 2022. 2. (1) In these Regulations Council Regulation (EU) No. 208/2014 means Council Regulation (EU) No. 208/2014 of 5 March 2014 as amended by the European acts specified in Part 1 of Schedule 1; Council Regulation

[S.I. No. 92/2022 - European Union \(Restrictive Measures Concerning Ukraine\) \(No.4\) Regulations 2022](#)

..... Ukraine) (No.4) Regulations 2022. 2. (1) In these Regulations Council Regulation (EU) No. 208/2014 means Council Regulation (EU) No. 208/2014 of 5 March 2014 as amended by the European acts specified in Part 1 of Schedule 1; Council Regulation

[S.I. No. 94/2022 - European Union \(Restrictive Measures Concerning Ukraine\) \(No.5\) Regulations 2022](#)

..... Ukraine) (No.5) Regulations 2022. 2. (1) In these Regulations Council Regulation (EU) No. 208/2014 means Council Regulation (EU) No. 208/2014 of 5 March 2014 as amended by the European acts specified in Part 1 of Schedule 1; Council Regulation

[S.I. No. 100/2022 - European Union \(Restrictive Measures Concerning Ukraine\) \(No.6\) Regulations 2022](#)

..... Ukraine) (No.6) Regulations 2022. 2. (1) In these Regulations Council Regulation (EU) No. 208/2014 means Council Regulation (EU) No. 208/2014 of 5 March 2014 as amended by the European acts specified in Part 1 of Schedule 1; Council Regulation

[S.I. No. 105/2022 - European Union \(Restrictive Measures concerning Ukraine\) \(No.7\) Regulations 2022](#)

..... Ukraine) (No.7) Regulations 2022. 2. (1) In these Regulations Council Regulation (EU) No. 208/2014 means Council Regulation (EU) No. 208/2014 of 5 March 2014 as amended by the European acts specified in Part 1 of Schedule 1; Council Regulation

[S.I. No. 117/2022 - European Union \(Restrictive Measures concerning Ukraine\) \(No.8\) Regulations 2022](#)

..... Ukraine) (No.8) Regulations 2022. 2. (1) In these Regulations Council Regulation (EU) No. 208/2014 means Council Regulation (EU) No. 208/2014 of 5 March 2014 as amended by the European acts specified in Part 1 of Schedule 1; Council Regulation

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EU Measures in Force

Council Regulation	Stated reason for restrictive measures	Primary objective
(EU) 208/2014 of 5 March 2014	“violence in Ukraine”	Freezing of assets of those responsible for misappropriation of Ukrainian State funds and human rights violations in Ukraine.
(EU) 269/2014 of 17 March 2014	“actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine”	Prohibition of trade in goods or services with occupied areas of Ukraine
(EU) 692/2014 of 23 June 2014	“restrictive measures in response to the illegal annexation of Crimea and Sevastopol”	Prohibition of trade in goods or services with occupied areas of Ukraine
(EU) 833/2014 of 31 July 2014	“in view of Russia's actions destabilizing the situation in Ukraine”	Prohibition of trade in goods or services with or to any person, entity or body in Russia or for use in Russia
(EU) 2022/263 of 23 February 2022	“the recognition of the non-government controlled areas of Donetsk and Luhansk and ordering of Russian armed forces into those areas”	Prohibition of trade in goods or services with occupied areas of Ukraine
(EC) No 765/2006 of 18 May 2006	“the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine”	Prohibition of trade in goods or services with or to any person, entity or body in Belarus or for use in Belarus

SI 116 (Belarus) and 117 (Russia)

- Contravention of the EU Regulations, or a condition in an authorisation under them, is an offence
- On summary conviction:
 - Class A Fine – €5,000
 - 12 months imprisonment
- On conviction on indictment
 - Fine of €500,000
 - 3 years imprisonment
- Where committed by a body corporate with the consent or connivance of or attributable to any neglect on the part of a director, manager, secretary or other officer, that person as well as the body corporate, is guilty of the offence
- Proceedings in relation to an act committed outside the State may be taken in any place in the State and the offence may for all incidental purposes be treated as having been committed in that place.
- Potential disqualification as director

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EU Regulations: Scope

- Regulations apply:
 - (a) within the territory of the EU, including its airspace;
 - (b) on board any aircraft or any vessel under the jurisdiction of an EU Member State;
 - (c) to any person inside or outside the territory of the EU who is a national of an EU Member State;
 - (d) to any legal person, entity or body, inside or outside the territory of the EU, which is incorporated or constituted under the law of an EU Member State;
 - (e) to any legal person, entity or body in respect of any business done in whole or in part within the EU [209/2014 art 17; 169/2014 art 17; 692/2014 art 10; 833/2014 art 13; 2022/263 art 15; 765/2006 art 10]
- It shall be prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the measures [209/2014 art 9; 169/2014 art 9; 692/2014 art 4; 833/2014 art 12; 2022/263 art 8; 765/2006 art 1m]

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EU Prohibitions: Occupied Ukraine

- Making available of funds or economic resources directly or indirectly, to or for the benefit of the natural and legal persons, entities and bodies listed [in Regs 208/2014, 269/2014]
- Importation of goods originating in Crimea or Sevastopol or provision of financing or financial assistance insurance or reinsurance related to the import of such goods [Reg 692/2014]
- Acquisition of interests in real estate, companies or joint ventures in Crimea or Sevastopol or the advance of funds by credit or investment or provision of related investment services [Reg 692/2014]
- Supply and maintenance of specified goods and technology to Crimea or Sevastopol [Reg 692/2014]
- Tourism services to Crimea or Sevastopol and relay of certain broadcasters [Reg 692/2014]
- Importation of goods originating in Donetsk and Luhansk or provision of financing or financial assistance insurance or reinsurance related to the import of such goods [Reg 2022/263]
- Supply and maintenance of specified goods and technology to Donetsk and Luhansk [Reg 2022/263]
- Tourism services to Donetsk and Luhansk [Reg 2022/263]

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EU Prohibitions: Russia

- Supply of dual-use technology or related technical assistance to any natural or legal person, entity or body in Russia or for use in Russia or provision of finance related to such goods or technology [Reg 833/2014]
- Supply of goods and technology or related technical assistance which might contribute to Russia's military and technological enhancement, or its defence and security sector, to any natural or legal person, entity or body in Russia or for use in Russia or provision of related finance [Reg 833/2014]
- Provision of public financing or assistance for trade with or investment in Russia [Reg 833/2014]
- Supply of specified technology [listed in Reg 833/2014] to any natural or legal person, entity or body in Russia or for use in Russia (specific listings the oil, aviation, space, maritime, industry equipment, luxury goods)
- Acquisition of interests in companies or joint ventures in Russia or the advance of related funds by credit or investment or provision of related investment services [Reg 833/2014]

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EU Prohibitions: Financial Services

- Purchase or sale, or provision of investment services or assistance in connection with, the issuance of certain securities by
 - specified Russian-controlled credit institutions
 - Russian-controlled entities predominantly engaged in the conception, production, sales or export of military equipment or services
 - Russia, its government, its Central Bank [Reg 833/2014]
- Provision of loans to such institutions or entities [Reg 833/2014]
- Acceptance of deposits of >€100,000 from Russian nationals or natural persons resident in Russia or legal persons, entities or bodies established in Russia [Reg 833/2014]
- Provision of financial messaging services for specified Russian-controlled entities [Reg 833/2014]
- Export of Euro banknotes to Russia [Reg 833/2014]
- Provision of credit rating services to any Russian national, resident or entity [Reg 833/2014]

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EU Regulations: Derogations

- Member States can unfreeze funds or economic resources
 - to satisfy basic needs
 - to pay legal fees
 - service charges for routine holding or maintenance of frozen moneys
 - where necessary for extraordinary expenses
 - to comply with a Court or arbitral orders for the benefit of a person other than a sanctioned person
 - to satisfy certain pre-listing obligations of sanctioned persons.
- Member States can give limited derogations in relation to supply of non-military equipment and technology for non-military users, e.g., for:
 - humanitarian purposes, medical or pharmaceutical purposes
 - personal use of natural persons travelling to Russia and limited to personal effects not intended for sale
 - maritime safety, intergovernmental space programs, civilian telecoms, internet.

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EU Regulations: Immunity from claims

- 208/2014 art 10(1); 269/2014 art 10(1):
 - The freezing of funds and economic resources or the refusal to make funds or economic resources available, carried out in good faith on the basis that such action is in accordance with this Regulation, shall not give rise to liability of any kind on the part of the natural or legal person or entity or body implementing it, or its directors or employees, unless it is proved that the funds and economic resources were frozen or withheld as a result of negligence.
- 208/2014 art 11; 269/2014 art 11; 692/2014 art 6; 833/2014 art 11:
 - No claims for compensation or under a guarantee, or payment of a bond, guarantee or indemnity, made by sanctioned persons can be satisfied.
 - Burden of proof is on the claimant to prove that it is not a sanctioned person

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EU Regulations: Immunity from claims

- “No claims ... shall be satisfied”, if they are made by:
 - any sanctioned person, entity or body;
 - any person, entity or body acting through or on behalf of such sanctioned person, entity or body;
 - in the case of regulation 833/2014, any other Russian person, entity or body or any person, entity or body acting through or on behalf of a Russian person, entity or body;
- 2. In any proceedings for the enforcement of a claim, the onus of proving that satisfying the claim is not prohibited by paragraph 1 shall be on the natural or legal person, entity or body seeking the enforcement of that claim.

[208/2014 art 11; 269/2014 art 11; 692/2014 art 6; 833/2014 art 11]

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Financial Transfers Act 1992

- SIs made under section 4 of the Act:
- SI 461/2014 Financial Transfers (Restrictive Measures Concerning Ukraine) (Prohibition) (No. 2) Order 2014
 - Art. 3: A person shall not make a financial transfer between the State and another country the effect of which would be to enable or facilitate, directly or indirectly, the doing of any thing which is a contravention of Council Regulations 208/2014, 269/2014, 682/2014 or 833/2014
 - Art. 5. A person shall not do anything to directly or indirectly assist in the circumvention of this Order.
- S.I. No. 559/2013 Financial Transfers (Belarus) (Prohibition) Order 2013
 - Art. 4: A person shall not make a financial transfer between the State and another country the effect of which would be to enable or facilitate, directly or indirectly, the doing of anything which is a contravention of Council Regulation 765/2006
 - Art. 8. A person shall not do anything to directly or indirectly assist in the circumvention of the provisions of this Order.

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Financial Transfers Act 1992

- On summary conviction:
 - a Class C Fine – €5,000
 - a daily Class E fine – €500
 - 12 months imprisonment
- On conviction on indictment
 - a fine of €12,697,380.78 or, if greater, twice the amount of the capital in respect of which the offence was committed
 - a daily fine of €126,973.81.
 - 10 years imprisonment.
- Where committed by a body corporate with the consent or connivance of or attributable to any neglect on the part of a director, manager, secretary or other officer, that person as well as the body corporate, is guilty of the offence
- Potential disqualification as director

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Action

- Know your client
 - Is the person you are dealing with a sanctioned person?
 - Is the person fronting for someone else?
 - Have you obtained full disclosure of persons beneficially interested in the matter?
 - Is the RBO inconclusive?
- Know the matter
 - Is the subject matter of your proposed instructions a sanctioned activity?
 - Are you open to be construed as “participat[ing], knowingly and intentionally, in activities the object or effect of which is to circumvent the measures”
 - Are you open to be construed as “directly or indirectly assisting” in “mak[ing] a financial transfer between the State and another country the effect of which would be to enable or facilitate, directly or indirectly, the doing of anything which is a contravention of the Council Regulation”?

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Consolidated Sanctions List

- <https://data.europa.eu/data/datasets/consolidated-list-of-persons-groups-and-entities-subject-to-eu-financial-sanctions?locale=en>

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Consolidated Sanctions List

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The screenshot shows the data.europa.eu website interface. At the top, there is a search bar with the text 'Search datasets' and a magnifying glass icon. Below the search bar, there is a navigation menu with options like 'Data', 'Studies', 'data.europa academy', 'News', and 'Contact'. The main content area displays the title 'Consolidated list of persons, groups and entities subject to EU financial sanctions'. Below the title, there is a description of the dataset, including its license (Creative Commons Attribution 4.0 International License) and publisher (European Commission). A paragraph of text explains the EU's policy on financial sanctions. At the bottom right, there is a logo for 'LAW SOCIETY PROFESSIONAL TRAINING' and 'Centre of Excellence for Professional Education and Lifelong Learning', along with the 'LAW SOCIETY OF IRELAND' logo.

Consolidated Sanctions List

- <https://data.europa.eu/data/datasets/consolidated-list-of-persons-groups-and-entities-subject-to-eu-financial-sanctions?locale=en>

The screenshot shows a list of datasets on the data.europa.eu website. The first dataset is 'Consolidated Financial Sanctions File 1.1', which is a CSV file based on the XML Schema Definition (XSD). It has a 'Download' button and a 'Linked Data' button. The second dataset is 'Consolidated Financial Sanctions in PDF Format', which is a PDF file containing the consolidated list of persons, groups, and entities subject to EU financial sanctions. It also has 'Download' and 'Linked Data' buttons. The third dataset is 'EU sanctions map', which is a map of EU sanctions. It has 'Download' and 'Linked Data' buttons. At the bottom right, there is a logo for 'LAW SOCIETY PROFESSIONAL TRAINING' and 'Centre of Excellence for Professional Education and Lifelong Learning', along with the 'LAW SOCIETY OF IRELAND' logo.

Consolidated Sanctions List

- <https://data.europa.eu/data/datasets/consolidated-list-of-persons-groups-and-entities-subject-to-eu-financial-sanctions?locale=en>

Consolidated Financial Sanctions File 1.1
Consolidated Sanctions List based on the XML Schema Definition (XSD)
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Download | Linked Data

Consolidated Financial Sanctions in PDF Format
Consolidated list of persons, groups and entities subject to EU financial sanctions (PDF)
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EU sanctions map
EU sanctions map
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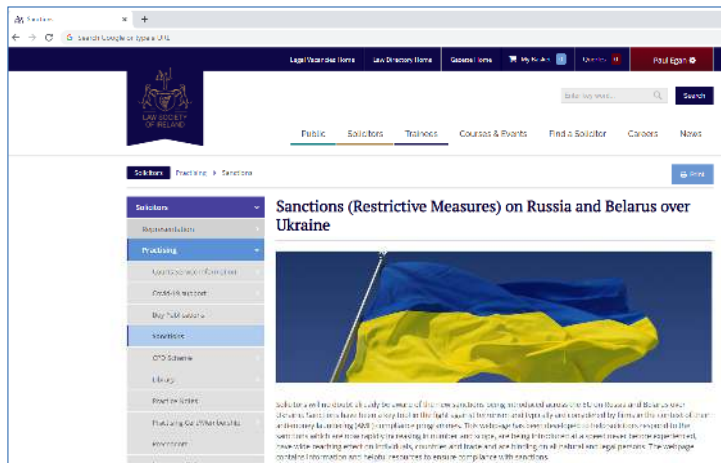
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Law Society Resource

- <https://www.lawsociety.ie/Solicitors/Practising/sanctions>



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Sanctions against Russia – the UK perspective

John Binns



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Sanctions against Russia: the UK perspective

John Binns, BCL Solicitors LLP

30 March 2022

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Pre-Brexit: EU Sanctions in the UK

- EU Regulations had direct effect
- UK Regulations imposed criminal penalties
- HM Treasury/Office for Financial Sanctions Implementation (**OFSI**)
- **Civil penalties**: Policing and Crime Act 2017

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- No UK challenge to designations
- Controversial use for alleged misappropriation (eg Egypt), bypassing **Proceeds of Crime** laws
- **Due process?**
- Withdrawal Agreement Political Declaration paras 97-98 – but nothing in Trade and Cooperation Agreement

- Political Declaration 19.10.19 para 98:
- ‘Where foreign policy objectives... are aligned between the Parties, intensified **exchange of information**... will take place, with the possibility of adopting sanctions that are **mutually reinforcing**’

UK Statutory Framework

- Sanctions and Anti-Money Laundering Act 2018 (SAMLA)
- empowers ministers to make regulations, which in turn enable designations
- financial, immigration, trade sanctions

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- Permitted purposes under SAMLA s1:
- UN or other international obligation
- or for a purpose that would (eg)
- be in the interests of international peace and security
- further a foreign policy objective

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- SAML A s2 (originally) imposed additional requirements where regulations were made to serve discretionary purposes:
- **good reasons** to pursue the purpose
- sanctions were a **reasonable** course of action
- **reports** to Parliament

- SAML A s11 enables powers to designate someone where:
- reasonable grounds to suspect they are (associated with, owned or controlled by etc) an **'involved person'**; and
- (originally) the designation was **appropriate**, having regard to purposes of regulations and likely effect on the person

- Right to request ministerial review (SAML A Part 1, Chapter 2)
- Court review of review decision (Chapter 5)
- No power to award damages unless bad faith or (originally) negligence (s39(2))
- Review regulations and rules of court

- Protection for acts done for purposes of compliance (SAML A s44)
- No liability for civil proceedings for acts done in the reasonable belief that they are in compliance with sanctions regulations
- Protection of Trading Interests legislation ('blocking statute'): UK/US clash

Russia Sanctions under SAMLA

- Russia (Sanctions) (EU Exit) Regulations 2019
- ‘Involved person’ (regulation 6):
- ‘is or has been involved in destabilising **Ukraine** or undermining or threatening the territorial integrity, sovereignty or independence of Ukraine’

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- Financial sanctions (Part 3)
- Freeze on assets **owned or controlled**
- Ban on making funds/economic resources available to/for benefit of designated person
- Separate financial and investment restrictions
- Liability based on ‘**reasonable grounds to suspect**’

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- Immigration sanctions (**travel bans**) (Part 4)
- Trade sanctions, ships, aircraft (Parts 5-6A)
- Exceptions and **licences** (Part 7)
- **Reporting** obligations (including for lawyers) (Part 8)
- Offences punishable with up to 7 years' **imprisonment** (Part 9)

Changes to Russia Sanctions

- Russia (Sanctions) (EU Exit) (Amendment) Regulations 2022 amended regulation 6:
- 'obtaining a **benefit** from or **supporting** the government of Russia'
- 'carrying on business in a sector of **strategic/economic significance**'

Changes to SAMLA

- Economic Crime (Transparency and Enforcement) Act 2022 removed:
- requirements for discretionary sanctions regulations, and for designations to be appropriate
- damages for negligence

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- New urgent procedure for designations (amending SAMLA s11)
- Sanctioned in US, EU, Australia, Canada...
- Public interest test
- Lasts 56 days and can be renewed once
- Applies to existing regulations

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- New **strict liability** basis for civil penalties
- Basis for criminal offences is unaffected
- Not yet in force - 3 months?
- Exacerbates an increasingly hostile environment
- The future? Broader-based restrictions?
Forfeiture of frozen assets?