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EU Adopts New Sanctions Program Targeting Destabilizing Activities by Russia against the EU, its Member States and Third Countries

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Key Takeaways:

- To mitigate their risk EU operators need to take affirmative due diligence steps. Simply lacking knowledge or reasonable cause to suspect is not enough.
- The specific due diligence required is not prescribed, but at minimum needs to incorporate publicly or readily available information.
- Consistent with prior EU guidance, such due diligence should be risk-based—with the advantage for EU operators also subject to U.S. jurisdiction that such risk-based due diligence corresponds with U.S. agencies' increasing expectations as well.

On October 8, 2024, the European Union (“**EU**”) adopted a new sanctions program authorizing the adoption of targeted restrictive measures responding to destabilizing activities undertaken by the Russian Federation abroad (the “**Hybrid Threats Sanctions Program**”). The EU announcement states that these hostile activities have recently intensified on European soil. Destabilizing activities, according to the announcement, include hybrid tactics that undermine or threaten the fundamental values of the EU, its security, independence and integrity, as well as the stability, security, independence and sovereignty of its Member States, of international organizations or of third countries. These include, among other things, election interference, threats against and sabotage of economic activities, services of public interest or critical infrastructure, disinformation campaigns, foreign information manipulation, malicious cyber activities, and the instrumentalization of migrants. The Hybrid Threats Sanctions Program is part of the EU’s Strategic Compass for Security and Defense plan and the EU Hybrid Toolbox for detecting and responding to hybrid threats.

The new restrictive measures are implemented through [Council Decision 2024/2643](#) and [Council Regulation 2024/2642](#).

Designation Criteria

Under the Hybrid Threats Sanctions Program, the EU can impose restrictive measures against individuals and entities responsible for, implementing, supporting, or benefitting from actions or policies by the Russian Government (i) which undermine or threaten democracy, the rule of law, stability or security in the EU, its Member States, in an international organization, or in a third country, or (ii) which undermine or threaten their sovereignty or independence through the following actions:

- Planning, directing, engaging in, supporting, or otherwise facilitating:
 - The obstruction or undermining of the democratic political process;
 - Violent demonstrations;
 - Acts of violence, including the intimidation or coercion against persons critical of Russian actions or policies;
 - The use of coordinated information manipulation and interference;
 - Any actions targeted at the functioning of democratic institutions, economic activities or services of public interest, including by unauthorized entry into the territory of an EU Member State or aimed at interfering with, damaging or destroying critical infrastructure;
 - The instrumentalization of migrants;
- Exploiting an armed conflict, instability or insecurity, including through the illicit exploitation or trade of natural resources and wildlife in a third country; or
- Instigating or facilitating an armed conflict in a third country.

Restrictive measures can also be imposed against persons associated with or supporting such individuals or entities.

The designated persons are subject to an asset freeze, a prohibition from making funds and economic resources available, and natural persons are subject to EU travel bans in the EU. As of October 9, 2024, no individuals or entities have yet been designated under the Hybrid Threats Sanctions Program.

Duty to Conduct Appropriate Due Diligence

Importantly, and consistent with the EU's sanctions program against Russia for its actions destabilizing the situation in Ukraine (Regulations 833/2014 and 269/2014), the preamble of Regulation 2024/2642 provides that the protection against liability for sanctions violations offered to EU operators that do not have knowledge or reasonable cause to suspect that their actions would violate the sanctions, cannot be successfully relied upon where the operators have failed to carry out appropriate due diligence. Although this Regulation does not detail the process to be followed when conducting due diligence, the preamble notes that EU operators should consider "publicly or readily available information" and perform "simple checks and inspections" as part of such due diligence. This is consistent with the European Commission's existing [Q&A on due diligence for business with Iran](#), its [FAQs on the implementation of Regulations 269/2014 and 833/2014](#), as well as its [guidance](#) for EU operators on implementing enhanced due diligence relating to Russia sanctions circumvention risks (see our [previous alert](#)) which notably underline the importance of conducting multi-level due diligence based on sanctions risk assessment results.

Exemptions

The Hybrid Threats Sanctions Program provides for a broad humanitarian exemption allowing, without authorization, the activities carried out by:

- The United Nations ("**UN**"), as well as its specialized agencies and related organizations;
- International organizations;
- Humanitarian organizations having observer status with the UN General Assembly;
- Bilaterally or multilaterally funded non-governmental organizations participating in the UN Humanitarian Response Plans, Refugee Response Plans, or other humanitarian clusters coordinated by the UN Office for the Coordination of

Humanitarian Affairs;

- Organizations and agencies certified or recognized by the UN or EU Member States;
- EU Member States' specialized agencies; or
- The employees, grantees, subsidiaries, or implementing partners of the entities mentioned above.

It should be noted that this humanitarian exemption will not be available for designated persons identified with an asterisk in Annex I to Regulation 2024/2642, which is currently empty.

Derogations

The Hybrid Threats Sanctions Program provides for derogations allowing the national competent authorities of the Member States ("**NCAs**") to authorize the release of certain frozen funds or economic resources, or the making available of such funds or economic resources:

- To satisfy the basic needs of designated persons and their dependent family members;
- For the payment of reasonable professional fees or the reimbursement of incurred expenses associated with the provision of legal services;
- For the payment of fees or service charges for the routine holding of frozen assets;
- For extraordinary expenses*;
- To be paid into or from an account of a diplomatic or consular mission or an international organization for their official purposes;
- For the functioning of diplomatic and consular representations of the EU, its Member States or partner countries in Russia;
- For the provision of electronic communication services by EU telecommunication operators, and for the provision of associated facilities and services necessary for the operation, maintenance and security of such electronic communication services;
- To ensure the timely delivery of humanitarian assistance or to support other activities that support basic human needs;
- To satisfy claims secured by an arbitral decision rendered prior to the designation or by a judicial or administrative decision rendered in the EU or enforceable in a Member State prior to or after the designation, provided that such decision is not for the benefit of a designated person and contrary to public policy of the Member State concerned;
or
- For payments due under a contract concluded before the designation if the funds or economic resources are used for a payment by a designated person and will not be made available to such person.

Reporting Obligations

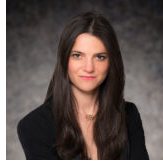
Finally, the Hybrid Threats Sanctions Program, requires EU operators to immediately provide information on the accounts and amounts frozen to their competent NCAs and transmit such information, directly or through EU Member States, to the European Commission.

The designated persons are also required to report funds or economic resources belonging to, owned, held or controlled by them to the NCAs of the Member State where those funds or economic resources are located within six weeks from their designation. Failure to comply with this obligation will be considered to be sanctions circumvention.

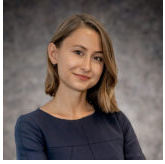
** While Regulation 2024/2642 does not define the notion of "extraordinary expenses", the European Commission has previously considered in the context of EU sanctions program against Iran (Regulation 267/2012) expenses to be of an extraordinary nature where the designated person could not reasonably expect having to face the expense, but the expense would be unavoidable under the circumstances.*



Anne Hukkelaas Gaustad



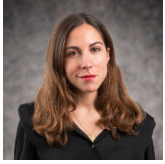
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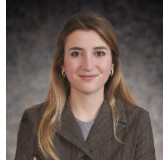
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