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Sanctions relating to aircraft

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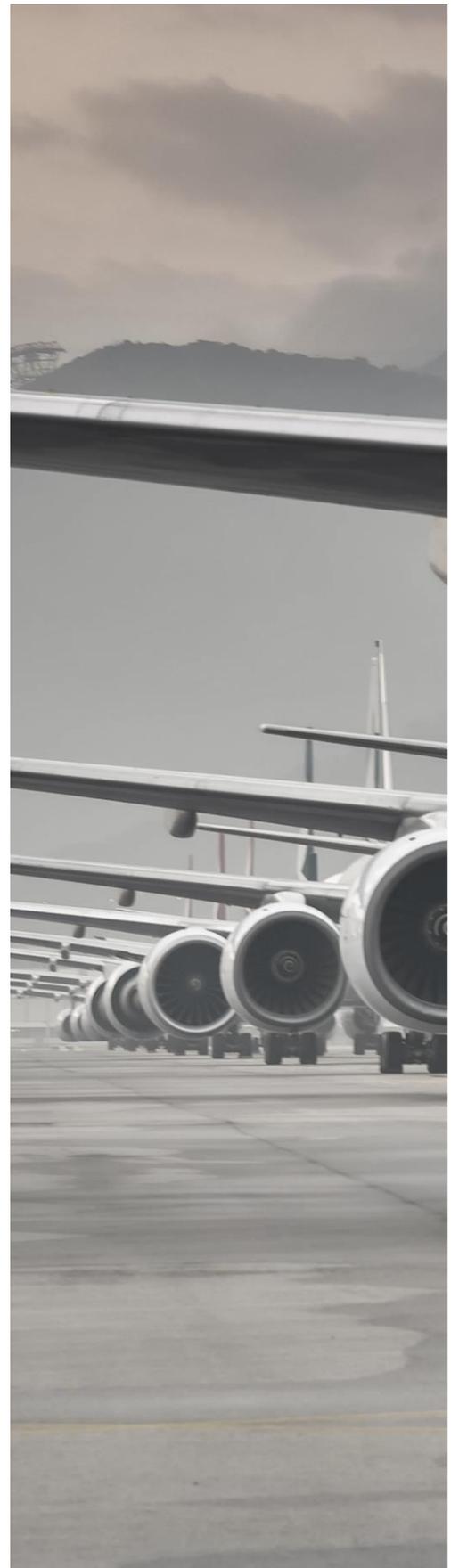


The restrictive measures introduced by the European Union in respect of the actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, concern not only the freezing of funds and economic resources of certain persons (as those are listed in Annex I of EU Council Regulation 269/2014, as amended – ‘**Listed Persons**’), or the restrictions on access to the capital markets for certain financial institutions, (such financial institutions, being ‘**Listed Entities**’ in Annexes III, IV, V and VI of EU Council Regulation 833/2014 as amended), but they also concern the closure of EU airspace and EU ports to Russian owned and Russian registered aircraft and Russian vessels.

With respect to aircraft, Article 3c of Regulation 833/2014, as amended, provides as follows:

Article 3c

1. It shall be prohibited to sell, supply, transfer or export, directly or indirectly, goods and technology suited for use in aviation or the space industry, as listed in Annex XI, and jet fuel and fuel additives as listed in Annex XX, whether or not originating in the Union, to any natural or legal person, entity or body in Russia or for use in Russia.
2. It shall be prohibited to provide insurance and reinsurance, directly or indirectly, in relation to goods and technology listed in Annex XI to any person, entity or body in Russia or for use in Russia.
3. It shall be prohibited to provide any one or any combination of the following activities: overhaul, repair, inspection, replacement, modification or defect rectification of an aircraft or component, with the exception of pre-flight inspection, in relation to the goods and technology listed in Annex XI, directly or indirectly, to any natural or legal person, entity or body in Russia or for use in Russia.
4. It shall be prohibited to:
 - a. provide technical assistance, brokering services or other services related to the goods and technologies for use in the aviation or space industries, originating in the EU or any other state and to the provision, manufacture, maintenance and use of those goods and technology, directly or indirectly to any natural or legal person, entity or body in Russia or for use in Russia.
 - b. provide financing or financial assistance related to the goods and technology referred to in paragraph (a) for any sale, supply, transfer or export of those goods and technology, or for the provision of related technical assistance, brokering services or other services, directly or indirectly to any natural or legal person, entity or body in Russia or for use in Russia.





Further, the items listed in **Annex XI** are: “aircraft, spacecraft, and parts thereof” and those included in **Annex XX** are all the fuel types and additives as referred to in article 3c.

The terms “technical assistance”, “brokering services” and “financing or financial assistance” used in Article 3c of Regulation 833 have been defined under Article 1(c), (d) and (o) respectively of Regulation 833 as follows:

‘technical assistance’ means any technical support related to repairs, development, manufacture, assembly, testing, maintenance, or any other technical service, and may take forms such as instruction, advice, training, transmission of working knowledge or skills or consulting services, including verbal forms of assistance;

‘brokering services’ means:

(i) the negotiation or arrangement of transactions for the purchase, sale or supply of goods and technology or of financial and technical services, including from a third country to any other third country, or
(ii) the selling or buying of goods and technology or of financial and technical services, including where they are located in third countries for their transfer to another third country;

‘financing or financial assistance’ means any action, irrespective of the particular means chosen, whereby the person, entity or body concerned, conditionally or unconditionally, disburses or commits to disburse its own funds or economic resources, including but not limited to grants, loans, guarantees, suretyships, bonds, letters of credit, supplier credits, buyer credits, import or export advances and all types of insurance and reinsurance, including export credit insurance; payment as well as terms and conditions of payment of the agreed price for a good or a service, made in line with normal business practice, do not constitute financing or financial assistance.

Article 3d of Regulation 833/2014 as amended provides as follows:

1. It shall be prohibited for any aircraft operated by Russian air carriers, including as a marketing carrier in code-sharing or blocked-space arrangements, or for any Russian registered aircraft, or for any non-Russian-registered aircraft which is owned or chartered, or otherwise controlled by any Russian natural or legal person, entity or body, to land in, take off from or overfly the territory of the Union.
2. Paragraph 1 shall not apply in the case of an emergency landing or an emergency overflight.
3. By way of derogation from paragraph 1, the competent authorities may authorise an aircraft to land in, take off from, or overfly, the territory of the Union if the competent authorities have determined that such landing, take-off or overflight is required for humanitarian purposes or for any other purpose consistent with the objectives of this Regulation.

Article 13 provides that Regulation 833 shall apply:

“(a) within the territory of the Union;

(b) on board any aircraft or any vessel under the jurisdiction of a Member State;

(c) to any person inside or outside the territory of the Union who is a national of a Member State;

(d) to any legal person, entity or body, inside or outside the territory of the Union, which is incorporated or constituted under the law of a Member State;

(e) to any legal person, entity or body in respect of any business done in whole or in part within the Union.”

This means in effect that EU nationals are obliged to conform with the EU regulations whether they are inside or outside the EU.



It is evident that, as with the other prohibitions contained in the EU regulations relating to sanctions, the wording of the above prohibitions, relating to aircraft, is very widely drafted, deliberately, since the European Union's aim is to ensure that the sanctions have an extensive effect.

People, entities and organisations, in the aviation industry, must therefore, pay particular attention to these provisions and assess whether and to what extent they are affected by the sanctions. These include, but are in no way limited to, aircraft operators, charterers, licensors, financial institutions, security providers, insurers, and so on, and generally people involved in the ownership, sale, operation, airworthiness, and maintenance of aircraft.

Even if one case does not seem to have any connection with Listed Entities or Listed Persons, there is still a risk that it may be caught by the prohibitions, if the aircraft in question is to be used in Russia.

Guidance is given by the EU on the meaning of the phrase *'for use in Russia'* in the frequently asked questions and answers given in the below document, updated as of 22nd June 2022 - https://ec.europa.eu/info/sites/default/files/business_economy_euro/banking_and_finance/documents/faqs-sanctions-russia-consolidated_en.pdf. According to this guidance, the meaning of the term *"for use in Russia"* used in the context of Article 3c of Regulation 833 should be understood as covering the sale/supply/transfer/export of goods/services which would be used in Russia, including operations between two points in Russia. For example, the restrictions shall apply to flights between two points in Russia, whether in connection or not with an international service. Strictly speaking, in-and-out types of operations are not covered by the sanctions. However, as soon as the in-and-out operation is complemented with a service inside Russia (e.g. Istanbul-Moscow-Saint Petersburg-Istanbul), it falls within the scope of the sanctions.

The interpretation of "for use in Russia" is the same for all the paragraphs of Article 3c (on maintenance, repair, insurance, financing, financial assistance, technical assistance, etc). The wording 'for use in Russia' is a formulation used to avoid the circumvention of the measures as it ensures that products and services sold/supplied/provided to third country persons, but to be used in the country subject to sanctions, are also prohibited.

Also, the restrictions imposed under Article 3d, intend to avoid the possibility of circumventing the rules by some legal construction and hence its scope is wide enough to encompass Russian citizens owning EU legal persons that registered the aircraft in an EU Member State.

In any case, where it is not clear and evident as to whether the sanctions apply, legal advice should be sought and each case will have to be assessed on its own facts.



LIA IORDANOU THEODOULOU

Partner, Head of Corporate Finance

<https://www.pavlaw.com/team/lia-iordanou-theodoulou/>



NIKOLETA CHRISTOFIDI

Associate

<https://www.pavlaw.com/team/nikoleta-christofidi/>



**PATRIKIOS PAVLOU
& ASSOCIATES LLC**

ADVOCATES - LEGAL CONSULTANTS

Patrician Chambers
332 Agiou Andreou str.,3035 Limassol,
Cyprus
P.O.Box 54543, 3725 Limassol, Cyprus

T +357 25871599 | F +357 25344548
info@pavlaw.com

www.pavlaw.com

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