

Russia responds to sanctions introduced by US and other countries

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Russia has adopted a federal law creating a legal framework for countermeasures to foreign economic sanctions, including restrictions on international cooperation in certain industries, imports and exports. While the law allows for the possibility of imposing countermeasures, it is for the Government and the President to actually implement them and determine which industries, goods and raw materials will be affected. No measures have been implemented yet. The law does not provide for specific enforcement tools and penalties for violations. However, contracts concluded in violation of the law may be deemed void by Russian courts.

In parallel, the Russian Parliament is considering a bill on criminal penalties on Russian citizens and legal entities for compliance with foreign sanctions. If adopted, it will primarily affect Russian subsidiaries of foreign companies. The bill was adopted in first reading on 15 May 2018, with further consideration postponed. It is currently unclear if or when the bill will be adopted.

On 4 June 2018, Russia adopted a Federal Law “On (counteracting) measures in response to the unfriendly actions of the United States of America and other foreign states” (**Law**), which took effect on 6 June 2018. The Law introduces a legal framework for counteracting measures in response to economic sanctions against Russia imposed by the US and other countries.

Targets of counteracting measures

The Law is targeted against the following actors (**Targets of Counteracting Measures**):

- a. “Unfriendly foreign states”, that include the US and any other state “engaging in unfriendly acts against the Russian Federation, citizens of the Russian Federation or Russian legal entities”
- b. Organisations under the jurisdiction of unfriendly foreign states, directly or indirectly controlled by unfriendly foreign states, or affiliated with them
- c. Officials and citizens of unfriendly foreign states.

Measures

The Law provides a non-exhaustive list of possible counteracting measures, which include:

- i. termination or suspension of international cooperation of Russia and Russian legal entities with Targets of Counteracting Measures in industries to be specified in accordance with a decision of the President of the Russian Federation;
- ii. a prohibition or restriction on import into the territory of Russia of products and raw materials originating from unfriendly foreign states or produced by organisations

mentioned under (b) above. The list of these products and raw materials will be determined by the Russian Government;

- iii. a prohibition or restriction on exports from the territory of Russia of products and raw materials by organisations mentioned under (b) above or the citizens of unfriendly foreign states. The list of these products and raw materials will be determined by the Russian Government;
- iv. a prohibition or restriction on the performance public procurement works and services on the Russian territory by organisations mentioned under (b) above. The list of these works and services will be determined by the Russian Government;
- v. a prohibition or restriction on the participation of organisations mentioned under (b) above and citizens of unfriendly foreign states in the privatisation of state or municipal property, as well as in the performance of specific types of work, provision of services connected with the privatisation of state property;
- vi. other measures to be determined by a decision of the Russian President.

The countermeasures are mandatory for Russian governmental and local authorities, Russian citizens and organisations under the Russian jurisdiction.

As follows from the above, the countermeasures will be implemented by the Government by decision of the President. So far none of the measures have been implemented. We are not aware of any draft implementation decisions as of 11 June 2018. However, although no time frame can be predicted, a decision to introduce countermeasures can be prepared and may take effect in short order.

Impact on Dutch (and other European) companies

The Law can potentially affect Dutch and other European companies in two ways.

First, companies subject to Dutch jurisdiction or the jurisdiction of another EU member state may be affected by the countermeasures if they:

- operate in industries where cooperation is limited or suspended as a result of implementation of countermeasure under (i) above. The Law does not define “cooperation”, so it remains to be seen how this will be interpreted;
- import/export goods or raw materials affected by the countermeasures (countermeasures (ii) and (iii) above); or
- carry out activities prohibited or restricted under the countermeasures under (iv), (v) or (vi) above.

Dutch and other European companies do not directly fall under the jurisdiction of the Law, but can be affected because Russian governmental and local authorities, Russian citizens and organisations subject to Russian jurisdiction will need to comply with the bans and restrictions potentially introduced by the countermeasures.

Second, Dutch and European companies can be affected if they have Russian subsidiaries. These subsidiaries will have to comply

with the countermeasures and their activity may be disrupted if it depends on export/import or includes prohibited activity.

It is uncertain which industries, goods, services and activities may become the target of any restrictions. A previous version of the draft Law specified certain industries (such as nuclear, aircraft building and rocket propulsion industries), as well as goods and raw materials (such as agricultural products, alcohol and tobacco products, medicines, products and equipment of rare earth metals) falling under the countermeasures. These references were deliberately removed in the final version at the urging of Russian business stakeholders. It is therefore uncertain whether these removed references can serve as any indicator of which industries, goods and raw materials may in fact become the target of any restrictions.

The Law does not specify any enforcement measures related to any potential countermeasures. If previous examples of Russian implementation of import restrictions in response to foreign sanctions provide a guide, import and export restrictions will most likely be enforced by customs authorities by way of denial of customs clearance of relevant goods and raw materials. Prohibitions and restrictions in the areas of public procurement and privatisation are likely to be enforced through specific, existing legislation in these areas.

Interestingly, the Law does not address sanctions for violations of the countermeasures. However, a separate law introducing sanctions for non-compliance may be drafted and introduced to the Russian Parliament in the near future. Since administrative or criminal sanctions may be introduced in the future, Russian businesses may be reluctant to enter into new transactions that may be affected by the countermeasures. Moreover, under general rules of Russian contract law, contracts concluded in violation of the countermeasures may be deemed void by Russian courts.

Criminal penalties for compliance with foreign sanctions

In parallel to the Law, the Russian Parliament is considering a bill introducing criminal penalties for compliance with foreign sanctions. According to the bill, criminal liability may be imposed on *Russian citizens, legal entities registered in Russia or entities under their control* for actions or omissions committed with the purpose of compliance with the decision of a foreign state, association of foreign states or international organisation that imposes restrictive measures.

The sanctions may apply if the actions or omissions have resulted in the refusal of these Russian parties to *engage in ordinary commercial operations or transactions*.

The bill defines “ordinary commercial operations or transactions” in a broad and vague manner. The transaction is considered to be “ordinary” if it is aimed at the performance of legal or contractual obligations that are carried out freely in the course of ordinary business activity by “entities that are not different from private or public entities or entities under their control which have been targeted by foreign sanctions”. The bill does not provide complete clarity on what will be covered by this provision, but in any event such transactions may include:

- a. conclusion of a contract, which *is mandatory under Russian law* with anybody who requests relevant goods or services (also known as “public contract” under Russian civil law). Public contracts are most common in the communications, energy, and medical sectors in business-to-consumer relations. In some cases, these provisions also apply in business-to-business dealings, for example, where a service provider has a monopoly (for example, on infrastructure)
- b. *performance of existing contracts*; and
- c. *other actions*, if “refusal from their performance is not usual due to the peculiarities of the individual counterparties”, including opening bank accounts, processing of payments, and carrying out operations with securities. This instance could be interpreted broadly and may potentially become a “catch-all” provision.

The penalties introduced by the draft law include fines of up to RUB 600,000 (approximately EUR 8,000) or imprisonment for up to four years. Criminal liability can only be imposed on natural persons. Legal entities are not subject to criminal punishment.

If adopted, the bill will primarily affect Russian subsidiaries of foreign companies. In its current form, the bill would impose criminal penalties for complying with existing contractual provisions that limit or prohibit commercial transactions with parties falling under foreign sanctions. Significantly, case law already exists which treats these provisions as unenforceable (see [Decision of Moscow Commercial Court of 17 January 2018](#), in Russian, and our In context article [here](#)).

When it comes to entering new contracts, the far-reaching effects of this bill remain to be seen. Situations where the entering of a contract is mandatory under Russian law are not widespread in business-to-business dealings. However, the application of the draft law to new transactions can be broadened through expansive interpretation of “other actions”.

The bill was adopted in first reading on 15 May 2018. The second reading – scheduled for 17 May – was postponed for an indefinite period. The summary of the draft law’s provisions is based on wording prepared for the second reading; it may be further amended after the second reading. It is currently unclear whether and, if so, when the draft law will be adopted.

We are closely monitoring developments related to Russia’s countermeasures in response to foreign sanctions, and will keep you informed.