

Russia Sanctions – Compliance Guide

FAQ FOR NGOS



UKRAINE

Contents

Key Points to note	3
Do the Russia Sanctions apply to you?	3
Connections with Russian Individuals and Businesses	6
Payments and Investments	9
Exemptions and Other Points to Note	12

Photo by Shmulik Elias on Unsplash

Law firms participating in this research are not liable towards third parties for the accuracy of the information contained in the Russia sanctions compliance guide. The research cannot be considered as legal advice. It was carried out in 2022 and responds to the regulatory framework on sanctions in this time period. If you have further queries please reach out to our clearinghouse for legal help.

© 2022 by PILnet and Partnering Firms

Since the Russian invasion of Ukraine, countries and regional organisations around the world have imposed sanctions on Russia and Belarus, as a means of putting pressure on Russia's government to end the invasion. These sanctions take different forms and have different targets (sectors/individuals/companies etc.).

While the objective of these sanctions is not to affect organisations such as NGOs who operate in or have links with Russia, inevitably these sanctions might have a direct or indirect impact on them.

The following questionnaire has been created to collect legal research, that will in turn help NGOs understand how sanctions regimes might impact them and to understand how some of these risks could be managed.

Jurisdiction	Ukraine
Date Last Updated	20 May 2022

Do the Russia Sanctions apply to you?

Is there any reason to think that you have any connection to Russia or Russians?

Sanctions under Ukrainian law are governed by the Law of Ukraine "On Sanctions" No. 1644-VII dated 14 August 2014 (the "Law"). Sanctions are based on the principles of legality, transparency, impartiality, and proportionality according to Article 3(2) of the Law.

Who is targeted by sanctions?

Article 1(2) of the Law provides that sanctions may be applied only against a foreign state, a foreign legal entity, a legal entity under the control of the foreign legal entity or individual, foreign nationals, stateless persons and persons engaged in terrorist activities.

NGOs and charity funds are not explicitly mentioned in the Law as entities which may be subject to sanctions applied by Ukraine, but it is possible that they may be caught nevertheless due to the broad definition of persons who may be sanctioned under the Law.

Risk to NGOs

The mere fact of NGO or charity fund having a legal presence in the Russian Federation, as well as employees on payroll or carrying out of other activity in the territory of Russian Federation is not likely to result in sanctions being imposed by Ukraine against such NGO or charity fund, provided that the latter are not engaged in any activities that undermine Ukrainian national security or statehood.

However, due care should be taken in cases of cooperation by an NGO with entities or persons which are already subject to sanctions imposed by Ukraine or are in the spotlight of a public discussion around potential sanctions or its ties with the Russian Federation or its 'agents'.

Grounds on which sanctions can be applied

The grounds on which sanctions may be applied under the Law are exhaustive and limited to the following:

- actions of a foreign state, foreign legal or natural person and other entities that create real and / or potential threats to national interests, national security, sovereignty and territorial integrity of Ukraine, promote terrorist activities and / or violate human and civil rights and freedoms, the interests of society and the state, result in the occupation of territory, expropriation or limitation of property right, inflict property damage, create obstacles to sustainable economic development and to enjoyment of rights and freedoms by the citizens of Ukraine in full;
- resolutions of the United Nations General Assembly and the Security Council;
- decisions and regulations of the Council of the European Union; and
- facts of violation of the Universal Declaration of Human Rights and the Charter of the United Nations.

The precise (formal) grounds on which a sanction is imposed are not automatically disclosable to the sanctioned party or the public, and it is for the Ukrainian state authorities to decide whether to make details publicly available. This is among the reasons why it is practically very challenging to bring a successful claim to lift or modify any sanctions that have been applied.

With which sanctions regimes may you and/or your employees need to comply as a matter of law?

Since the Law became effective in September 2014, the Council has imposed sanctions against thousands of individuals and legal entities by numerous Decisions which were brought into force by the relevant Orders of the President of Ukraine.

The majority of these sanctions refer to asset blocking, prevention of capital withdrawal outside of Ukraine, restriction of trade operations with sanctioned persons, and cancellation of special permits or licences (for instance, special permits for mining). The full list of sanctions which may be imposed under the Law is provided by Article 4(1), and includes the following:

- blocking of assets – temporary restriction of a person’s right to use and dispose of owned property;
- restriction of trade operations;
- restriction, partial or complete cancellation of transit of resources, flights and transportation through the territory of Ukraine;
- prevention of capital withdrawal outside Ukraine;
- suspension of economic and financial obligations performance;
- revocation or suspension of licenses and other permits, required to carry out certain types of activity;
- prohibition of participation in privatization, lease of state property by residents of a foreign state and persons who are directly or indirectly controlled by residents of a foreign state or act in their interests;
- ban on the use of radio frequency resources of Ukraine;
- restriction or termination of the provision of electronic communication services and the use of electronic communication networks;
- prohibition of public and defense procurement in certain cases;
- prohibition or restriction of entry of foreign non-military vessels and warships into the territorial sea of Ukraine, its internal waters, ports and of aircraft into the airspace of Ukraine or landing on the territory of Ukraine;
- complete or partial prohibition of transactions with securities, the issuers of which are persons to whom sanctions have been applied in accordance with the Law;
- prohibition of issuing permits, licenses of the National Bank of Ukraine for investments in a foreign state, depositing of cash on accounts in a foreign state;
- termination of issuance of permits, licenses for import into Ukraine from a foreign state or export from Ukraine of cash and restriction of issuance of cash from payment cards issued by residents of a foreign state;
- prohibition of registration by the National Bank of Ukraine of a participant in an international payment system, the payment organization of which is a resident of a foreign state;
- prohibition to increase the charter capital of companies in which residents of a foreign state or a foreign state itself hold at least 10% of shares;

- introduction of additional measures in the field of ecological, sanitary, phytosanitary and veterinary control;
- termination of trade agreements, joint projects and industrial programs in certain areas, in particular, in the field of security and defense;
- prohibition of transfer of technologies, rights to intellectual property objects;
- termination of cultural exchanges, scientific cooperation, educational and sports contacts, entertainment programs with foreign states and foreign legal entities;
- refusal to provide and cancel visas to residents of foreign countries, application of other bans on entry into the territory of Ukraine;
- suspension of international agreements which has been approved by the Parliament of Ukraine;
- cancellation of official visits, meetings, negotiations on the conclusion of contracts or agreements;
- deprivation of Ukrainian national awards and other forms of distinction; and
- prohibition on the acquisition of land plots.

Please note that the above list of potential Ukrainian sanctions is not exhaustive, and, pursuant to Article 4(1), para 25 of the Law, Ukraine can apply other sanctions in line with the sanction principles outlined above.

Any of the abovementioned sanctions (and any combination of them) may be imposed by Ukraine against a person engaged in activities that undermine Ukrainian national security or statehood, irrespective of the place of its residence / registration (i.e. whether it is registered / residing in the territory of Ukraine or not). We are not aware of any guidelines published by Council or other state bodies in relation to sanctions regime which would be relevant for an NGO or a charity fund.

The online data system developed by the Council (the “COTA”) allows the interested parties to keep track of all sanctioned persons and this information can be publicly accessed [here](#).

COTA is still in ‘test mode’, but can be used to check the appearance of a particular individual or legal entity in the list of sanctioned persons by searching for its name or registration number, including historic and expired sanctions. This functionality is available only in Ukrainian, so it is necessary to transliterate the names of overseas companies, organizations, and individuals into Ukrainian to run an accurate investigation (see guidance on transliteration into Ukrainian [here](#)). If a sanction target has the official name in Ukrainian (for instance, its name registered with the Ukrainian state authorities), it can be used as a primary source for a check.

However, it is not clear whether the COTA database is fully up-to-date and accurate (e.g. there may be gaps and typos), so it may be prudent to also check all the President’s Orders regarding the Ukrainian sanctions (in Ukrainian). This may be an onerous exercise.

Several charity funds registered in Russia and in the temporarily occupied territory of the Autonomous Republic of Crimea are indicated in the COTA database to date.

Have you agreed to comply with sanctions with which you would not be required to comply as a matter of law by contractual agreements (e.g. with lenders, in donor agreements)?

It is important to always review contracts and any arrangements (even of an informal and communication nature) entered into between your NGO and a third party to identify any risks associated with clauses incorporating Ukrainian or any other sanctions regime by reference and, more broadly, any sanction-related red flags.

For the purposes of the Ukrainian legislation, it is irrelevant whether a person agreed to comply with the Ukrainian sanctions regime (e.g., by entering into a legally binding agreement or by a fact of such person’s registration / residence within the territory of Ukraine) or not.

The Council (together with the President of Ukraine and the Parliament of Ukraine, in some cases) may impose sanctions against Ukrainian nationals and / or non-residents where there is sufficient evidence (in the view of the Ukrainian state bodies) that such person is, or might likely be, engaged in or facilitates activities threatening Ukrainian national security or statehood.

Connections with Russian Individuals and Businesses

Are you engaging with any person specifically targeted by any of these sanctions?

As mentioned in our response to Question 2 above, the full list of persons (both individuals and legal entities) specifically targeted by the sanctions under the Ukrainian legislation is available online [here](#).

Ukrainian law is silent as to the possible consequences for non-sanctioned persons in cases of cooperation with sanctioned individuals. However, the existing Ukrainian court practice follows a restrictive approach in this context, where only the persons specified in the relevant Decision of the Council, approved by an Order of the President of Ukraine (and the Parliament of Ukraine in some cases) are subject to relevant sanctions, not the persons who deal with them directly or indirectly. However, generally, court practice is not a source of law in Ukraine, and therefore this position may possibly change in the future.

The sector-specific state regulators, such as the National Bank of Ukraine and the Ukrainian National Commission on Securities and Stock Market (which oversees capital markets and non-banking financial service market players) have issued a “sort of guidance” on how Ukrainian banks and capital / non-banking financial service market players must honor and implement specific types of the Ukrainian sanctions. These guidelines are expected to be compulsory upon their addressees, and therefore these institutions are quite prudent while dealing with sanction targets.

Some further restrictions have been implemented through the Ukrainian legislation. For instance:

- state and public notaries, and potentially also state registrars, are prohibited from providing services at request of persons / legal entities sanctioned by Ukraine;
- the Ukrainian antimonopoly regulator (the Antimonopoly Committee of Ukraine) must not clear a transaction requiring antimonopoly approval, if any party to this transaction (equally applying not to a direct party, but generally to any entity/ individual on the ownership structure of a group) is sanctioned by Ukraine; and
- privatization and/or lease of state or municipal property and concessions are not available to sanctioned persons.

Please refer to Question 8 below for details of the potential consequences of engagement with sanctioned persons.

Are you engaging with any entity owned or controlled by any of these sanctions?

Normally sanctions affect only those who have been directly listed and would not affect persons “owned or controlled” by sanctioned ones. The nature of a particular sanction could, however, affect other persons than those sanctioned (e.g. prevention of capital withdrawal from Ukraine would enable to pay dividends to sanctioned persons, and / or restriction of trade operations would prevent entities from entering into such operations with sanctioned persons, etc.).

Please also refer to our response to Question 4 regarding existing court practice.

Are you importing or exporting any goods that may be subject to import/export restrictions?

It should be noted that all of the below regulations, as well as others, are being constantly changed and modified by the Government of Ukraine to respond to the situation in Ukraine in the most effective, proportional, and adequate way. Therefore, it is necessary to check the most up-to-date sanctions on a regular basis.

Restrictions on Imports into Ukraine

On 24 February 2022, the National Bank of Ukraine passed Regulation No. 18 “On the Operation of Banking System during the Period of Martial Law” (as amended from time to time), which is aimed at limiting the withdrawal of foreign currency outside of Ukraine, including in cases of payment for goods (i.e. any products, services, work products, or rights to intellectual property objects) being imported into the territory of Ukraine. To date, over ten amendments have been made to this Regulation, which means that it is crucial to check the most recent version of the Regulation so as not to omit anything.

It is generally prohibited to carry out payments in Ukrainian Hryvnia and foreign currency outside of Ukraine unless such payment is being performed for goods of so-called “critical import”.

The list of goods of “critical import” is approved by the Resolution of the Cabinet of Ministers of Ukraine No. 153 dated 24 February 2022 (as may be amended from time to time) which is being constantly amended to include new categories. The Cabinet of Ministers of Ukraine also approved criteria for determining goods of “critical import”. Such goods are divided into 4 subgroups:

- the energy sector;
- the security and defense sector;
- the sector of ensuring the livelihood of population; and
- the sector of ensuring the functioning of industrial enterprises.

The following criteria should be met for import of goods for the energy sector:

- the product is necessary for supplying energy resources to Ukraine (petroleum products, oil, gas, electricity, coal); and
- the product is necessary to ensure the energy security of Ukraine (operation of nuclear power plants, power grids, dispatching systems).

The following criteria should be met for the import of goods for the security and defense sector:

- the product is necessary to address the needs of the Armed Forces, the Ministry of Defense; and
- the product is a raw material or an instrument of production to perform mobilization tasks (orders).

The following criteria should be met for the import of goods for the sector of ensuring the livelihood of population:

- the product refers to scarce food products, the lack of which can lead to a humanitarian and food crisis;
- the product is part of the production cycle of critical food products;
- the product is the primary or wholesale packaging of food products;
- the product is necessary for the implementation of measures for the continuous operation of transport, particularly fuel and lubricants, electricity, medicines, repairs of priority emergency; and
- the product belongs to medicines, immunobiological drugs (vaccines), medical devices and auxiliary means, medical equipment.

The following criteria should be met for the import of goods for the sector of ensuring the functioning of industrial enterprises:

- the product is a raw material or a component of the production cycle of Ukrainian enterprises, indispensable for the production of finished products which are supplied to the domestic market or being exported.

Persons that are interested in expanding goods of “critical import” with items that fall under one or more of the above criteria should apply to the Ministry of Economy of Ukraine with a relevant request.

Note that Ukraine also has control regulations in place which cover the import and/or export of military goods and dual-use goods (i.e., goods which are intended for civil use but may potentially be used for military purposes). Where goods being imported or exported qualify as either military or dual-use (e.g., bullet-proof vests, helmets, UAVs), their transfer may be subject to export control regulations and may require licenses and registrations with the State Service for Export Control of Ukraine. Since the imposition of the martial law in Ukraine, many of the export control requirements were loosened.

Restrictions on Exports from Ukraine

On 5 March 2022, the Cabinet of Ministers of Ukraine amended its Resolution No. 1424 dated 29 December 2021 and prohibited export of some socially important products: meat, rye, oats, buckwheat, sugar, millet, and salt.

Further amendments may be later introduced by the Cabinet of Ministers of Ukraine into the list of products which may not be exported, depending on the duration of martial law and the overall situation with the Russian invasion of Ukraine.

If the export of particular product is not prohibited, then it may be either freely exported or a relevant license for its export from the Ministry of Economy may be required. In order to obtain a license, an exporter must submit the necessary documents to the regional state administration and to the Ministry of Economy.

As above, note that Ukraine also has control regulations in place which cover the import and/or export of military goods and dual-use goods.

Import and export to and from Russia and Belarus:

On 9 April 2022, the Cabinet of Ministers of Ukraine imposed a full embargo on import of any goods from the Russian Federation into Ukraine, and also any export from Ukraine to the Russian Federation.

There are no formal restrictions on the import and export of goods to and from the Republic of Belarus in place since 24 February 2022, but, to our knowledge, such import / export operations do not take place in practice.

Do you have any involvement with activities in the Donetsk, Luhansk and Crimea regions, which are subject to specific regimes?

Prior to 24 February 2022, Ukraine regarded certain areas in the Donetsk and Luhansk regions of Ukraine as temporarily occupied territories, controlled by the Russian Federation as an occupying state.

The Law of Ukraine “On Securing the Rights and Freedoms of Citizens and On the Legal Status in the Temporarily Occupied Territories” No. 1207-VII dated 15 April 2014 provides that Ukraine undertakes to

maintain economic, financial, social, and other forms of connection with the citizens of Ukraine which are residing in the temporarily occupied territories, while Russian Federation, as an occupying state, shall be held liable for any violations of rights and freedoms of Ukrainian citizens in these occupied territories.

Ukraine does not recognize any laws, acts, transactions, and court decisions that might take place or be enacted in the temporarily occupied territories under the legislation “DPR” and “LPR”, which Ukraine does not recognize and has classified as terrorist organizations, or under the legislation of the Russian Federation.

Subject to strict and precise compliance with the Ukrainian legislation and international standards and requirements, the mere fact of official lawful and reasonable humanitarian activity of NGOs or charity funds in the temporarily occupied territories should not result in any negative legal consequences (i.e. imposing of sanctions by Ukraine), so long as these NGOs and charity funds do not engage in any activities that undermine Ukrainian national security or statehood or that, in any manner, facilitate or assist in any such actions. For instance, it is prohibited to assist militants or leaders of the temporarily occupied territories in the preparation and conduct of illegal voting (i.e. referenda) in these territories or elsewhere.

Please note that “DPR” and “LPR” are also subject to different restrictive measures and sanction regimes applied by the US, Great Britain and European Union.

Payments and Investments

Do you have a charitable trust or foundation that might involve dealing with equity/ debt instruments issued by, or making loans available to Russian state owned companies, persons connected with Russia, or the Government of Russia?

Securities and other Financial Instruments

Currently, no securities issued by Russian state companies, or the Government of Russian Federation, are admitted to trading within the territory of Ukraine. Thus, Ukrainian entities will be able to deposit such securities only in foreign securities accounts, which are subject to the requirements of the local law of the country where such account is maintained. To the extent that dealing with such securities is restricted, any consequences shall be viewed in the light of the law of the country where the securities account is maintained and any applicable local and international sanctions and AML regulations. However, note that it is not certain whether the Ukrainian sanctions exercise an extraterritorial effect (i.e. whether they prohibit transactions with sanctioned persons at an ‘offshore’ level).

In terms of securities issued by persons connected with Russia, the restrictions may be imposed on shares, bonds, deposit certificates, loan participation notes, depositary receipts, etc.

Ukraine prohibits the performance of any obligations which could potentially result in the transfer of securities to the Russian Federation or persons related to the Russian Federation. Any agreements concluded in violation of the above prohibition are deemed null and void.

“Persons related to the Russian Federation” here includes:

- citizens of the Russian Federation, other than those lawfully residing in Ukraine;
- legal entities incorporated and registered under the laws of the Russian Federation; and
- legal entities incorporated and registered under the laws of Ukraine, where UBO, member or participant (shareholder) with a share of at least 10% is the Russian Federation, or a citizen of the Russian Federation, or a legal entity incorporated and registered under the laws of the Russian Federation. No restrictions apply to the exempted legal entities incorporated and registered in Ukraine.

Loans and other Financial Obligations

Although it is not explicitly prohibited in the law, in practice Ukrainian entities / individuals will be unable to extend loans to the unsanctioned Russian companies or persons connected with Russia.

Providing services in arrears to the Russian state-owned companies or persons connected with Russia is not deemed a loan. However, note that an entity must not proceed with transactions with Russian state-owned companies or persons connected with Russia to the extent that:

- such entity is under sanctions; or
- there is a prohibition to make payments in favor of such entity.

Additionally, any transaction resulting in transfer of ownership over immovable property, securities, corporate rights, vehicles, aircrafts, or watercrafts to the Russian Federation or persons related to the Russian Federation is prohibited.

There is also a risk that Ukrainian entities / individuals engaged in providing services / loans to the persons connected with Russia may be classified as conducting “economic activities in cooperation with the aggressor state”. Such activity would trigger a criminal investigation in relation to such Ukrainian entity / individual (under Article 111-1 of the Criminal Code of Ukraine – collaboration activity). Note that Article 111-1 has only been recently added to the Criminal Code of Ukraine and, therefore, there is little detail on the interpretation of its provisions.

Are you affected by restrictions on processing funds (e.g. making payments where Russian banks have been removed from SWIFT)?

With effect from 3 March 2022, any payments (including any proceeds from enforcement of debt) to the Russian Federation or persons related to the Russian Federation are prohibited (please refer to question 8 for more detail on the definition of “persons related to the Russian Federation”).

A separate prohibition applies to transactions in currency other than Ukrainian Hryvnia in the following circumstances:

- transactions in Russian roubles (other than interbank sale of Russian roubles transferred to bank clients),
- transactions where any of the participants is an entity or an individual registered or residing in the Russian Federation;
- transactions for the performance of obligations before entities / individuals registered or residing in the Russian Federation.

It follows that transactions carried out through Russian banks are not feasible in practice.

Are you affected by restrictions on access by Russian individuals to local bank accounts?

Withdrawals from accounts (denominated in any currency) of individuals residing in Russia held with Ukrainian banks are currently suspended. The restriction covers:

- any and all transactions denominated in Russian roubles and Belarussian roubles; and
- most transactions in other foreign currencies.

However, the following transactions in Ukrainian Hryvnia (unless specified otherwise) are exempted from

the above restriction:

- donation to the official account of the Armed Forces of Ukraine, the Cabinet of Ministers of Ukraine, ministries, and other government bodies;
- social benefits, payment of salaries, utility fees, taxes, duties and other mandatory payments;
- certain expressly exempted transactions (a limited number);
- transactions performed by individuals exempted from the restriction based on decision of the Security Service of Ukraine;
- sale of non-cash foreign currency (save for Russian roubles and Belarussian roubles);
- payment of bank fees etc.; and / or
- transactions by individuals placed on a 'green' list approved by the Security Service of Ukraine, or other state bodies provided that such other 'green' lists are pre-approved by the Security Service of Ukraine or are based on a separate permit by the National Bank of Ukraine or other competent state bodies.

At present, no exemption is stipulated for charitable donations. To the extent that NGOs rely on funding from accounts of Russian individuals with local banks, they should seek alternative sources of funding. If this is impossible, they should, at minimum, conduct a proper legal, sanctions, and AML analysis well in advance and agree upon any future actions with their servicing bank(s) in Ukraine.

As a general note, the temporary foreign and national currency restrictions now in place are quite demanding and strict. However, we note that the National Bank of Ukraine continues to monitor the efficiency and reasonableness of these measures to ensure that they are necessary and proportionate, and has already started lifting some of them. It may also be possible to engage the National Bank of Ukraine in open and fair discussions with 'eligible' stakeholders (e.g. NGOs) if required.

Are there any sanctions that apply to using or trading cryptoassets?

Under Ukrainian law, cryptoassets are not deemed securities or financial instruments. The current law is limited to defining cryptoassets, as well as detailing information requirements for effecting some transfers with cryptoassets. The temporary restrictions introduced for the period of martial law in Ukraine apply only to transfer of virtual assets and are applicable exclusively to individuals.

The newly adopted Law of Ukraine "On Virtual Assets" No. 2074-IX dated 17 February 2022 (which is yet to enter into force) prohibits entities of an aggressor state, as well as any entities linked to it from providing services with cryptoassets. Note that, at present, the Russian Federation appears to be the only state that has been classed formally as an aggressor state and, as far as we are aware, Belarus has not yet been officially recognized by Ukraine as a state-aggressor or a sponsor of terrorism.

The National Bank of Ukraine has also enacted a prohibition on the use of Ukrainian Hryvnia for settlements under so-called 'quasi cash' transactions. Irrespective of the ban, 'quasi cash' transactions in foreign currencies should still be permitted, up to the foreign currency equivalent of UKRAINIAN HRYVNIA 100,000 (approximately EUR 3,000). The same monthly limit also now applies to cross-border P2P money transfers. The notion of 'quasi cash' transactions entails, among other things, the purchase of virtual assets. This prohibition should not touch upon the use of payment cards abroad or within the territory of Ukraine for the payment for goods and services that do not relate to 'quasi cash' transactions.

Exemptions and Other Points to Note

To the extent that there are restrictions which apply, can you apply for licenses to relevant authorities e.g. “in connection with the performance of any humanitarian assistance activity”?

Ukrainian law is silent as to any licenses / permits to deal with sanctioned entities or conducted restricted transactions, which could be issued “in connection with the performance of any humanitarian assistance activity”. For instance, this means that no Ukrainian analogue of a USA export licence can be secured to eliminate the impact of the Ukrainian sanctions.

Other points to consider

Similar restrictions to those described in Questions 9 and 10 apply to Belarussian entities and individuals. In particular, the below transactions in currency other than Ukrainian Hryvnia are prohibited:

- any payments with the use of Belarus roubles (other than interbank sale of Belarussian roubles transferred to bank clients);
- transactions where any of the participant is an entity or an individual registered or residing in Belarus; and / or
- any transaction aimed at performance of obligations due to legal entities or individuals registered / residing in Belarus.

Withdrawals from accounts of individuals residing in Belarus held with Ukrainian banks are also suspended. The restriction covers all transactions with any currency other than Ukrainian Hryvnia, although some transactions (payment of salaries, social benefits, donations to the Armed Forces of Ukraine or government bodies etc.) are exempted.