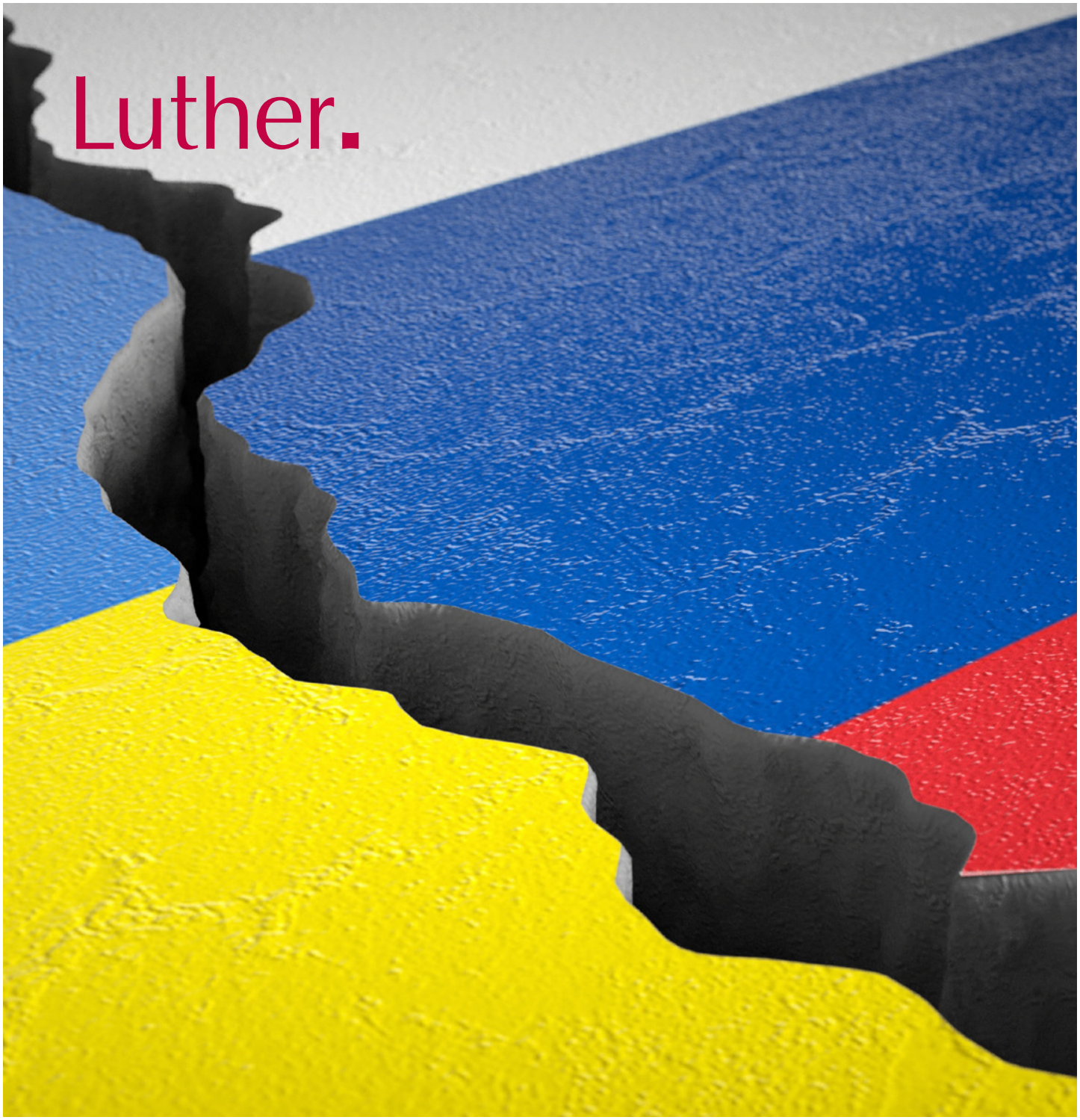


Russia. Ukraine. Europe. Legal implications for your company

28. February 2022

unyer GLOBAL ADVISORS

Content

New (economic) sanctions imposed by the EU 3

Impact of sanctions on existing contractual relationships 6

Impact on arbitration proceedings 8

Impact on investment protection 10

Impact on energy policy 12

Authors of this issue 14

Events, publications and blog 15

New (economic) sanctions imposed by the EU

As a result of the armed conflict in the Donetsk and Luhansk oblasts of eastern Ukraine (regions that emerged from the Euromaidan protests in the spring of 2014) supported by the Russian Federation and the annexation of Ukraine's Crimean peninsula in March 2014, but also because of the human rights violations committed by the former government of Ukraine under President Viktor Yanukovych, the European Union imposed numerous sanctions against Russia and Ukraine as recently as 2014, which have been continuously expanded and extended and are still in force today. In response to the most recent events that have occurred since 21 February 2022, these existing measures have now been further expanded, strengthened and supplemented.

Background

The previous sanctions comprise the following:

- Council Regulation (EU) No **208/2014** of 5 March 2014: Financial sanctions against certain persons, entities and bodies identified as being responsible for human rights violations in Ukraine or for the misappropriation of Ukrainian State funds

- Council Regulation (EU) No **269/2014** of 17 March 2014: Financial sanctions against persons responsible for actions which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine

- Council Regulation (EU) No **692/2014** of 23 June 2014: Restrictions on the import into the EU of goods originating in Crimea or the city of Sevastopol; restrictions on trade and services; investment ban

- Council Regulation (EU) No **833/2014** of 31 July 2014: Trade restrictions on dual-use goods and equipment for the energy sector; restrictions on access to the EU capital markets; the arms embargo imposed at the same time is to be regulated nationally by the Member States (implemented in Germany in Sections 74 et seqq. of the Foreign Trade and Payments Ordinance (Außenwirtschaftsverordnung, AWV)

The new EU sanctions (as of 28 February 2022)

In response to President Vladimir Putin's recognition announced on 21 February 2022 of the independence and sovereignty of the self-proclaimed People's Republics of Donetsk and Luhansk the EU expanded the existing list of sanctions on 23 February 2022 and issued a new sanction regulation at the same time. The EU responded to the Russian military invasion of not only the Donetsk and Luhansk oblasts but all of Ukraine, which began on the morning of 24 February 2022, by imposing additional sanctions and restrictions on 25 February 2022 and continued to announce further measures on 26 February 2022 and over the following days. The following sanctions (in chronological order) are currently already in force:

- Council Implementing Regulation (EU) **2022/260** of 23 February 2022:
  22 natural persons (from the highest political and military circles) and four entities were added to the sanctions list under Regulation (EU) **269/2014**. The listed entities are In-

ternet Research Agency, Bank Rossiya, PROMSVYAZBANK, VEB.RF (a.k.a. Vnesheconombank; VEB).

- Council Implementing Regulation (EU) **2022/261** of 23 February 2022:
  336 natural persons (members of the Russian State Duma) were added to the sanctions list under Regulation (EU) **269/2014**.

- Council Regulation (EU) No **2022/262** of 23 February 2022: Amendment to Council Regulation (EU) **833/2014**:
  Financial restrictions were further extended. Under the new Article 5a of Regulation (EU) 833/2014, it shall be prohibited, inter alia, to directly or indirectly purchase, sell, provide investment services for or assistance in the issuance of, or otherwise deal with transferable securities and money-market instruments issued after 9 March 2022 by: Russia and its government, the Central Bank of Russia, or a legal person, entity or body acting on behalf of or at the direction of the Central Bank of Russia. Furthermore, it shall be prohibited to directly or indirectly make or be part of any arrangement to make any new loans or credit to these entities and bodies.

- New Council Regulation (EU) No **2022/263** of 23 February 2022 "*concerning restrictive measures in response to the recognition of non-government controlled areas of the Donetsk and Luhansk oblasts of Ukraine and the ordering of Russian armed forces into those areas*."
  Under this new sanction regulation, new and further goods-related restrictions were imposed in addition to already existing measures under Council Regulation (EU) 833/2014, which were limited to the Donetsk and Luhansk oblasts (so-called "specified territories"). These are in particular: Pursuant to Article 2 it shall be prohibited to import into the European Union goods originating in the specified territories and to provide, directly or indirectly, financing or financial assistance as well as insurance and reinsurance related to the import of such goods. Article 3 prohibits, inter alia, the acquisition (even partial) of real estate or ownership or control of entities in the specified territories or the establishment of companies there (investment ban). Article 4 prohibits the sale, supply, transfer or export of the goods and technology listed in Annex II to any natural or legal person, entity or body in, or for use in, the specified territories and also the provision of technical assistance or brokering services as well as financing or financial assistance. This covers goods and technologies from the fields of transport, telecommunications, energy, prospecting, exploration and production of oil, gas, and mineral resources. The norm of Article 5 contains a prohibition of the provision of technical assistance or brokering, construction or engineering services directly related to infrastructure in the specified territories in the aforementioned sectors. Article 6 prohibits the provision of services directly related to tourism activities in the specified territories.

- Council Regulation (EU) No **2022/328** of 25 February 2022:
  further amendment to Council Regulation (EU) **833/2014**:
  The prohibition of the export of dual-use items to Russia or for use in Russia under Article 2 (1) now applies without restriction (subject to narrow exceptions) and no longer only where such items are or may be intended for military use or for a military end-user or for certain named recipients. Article 2 (2) also now imposes a general prohibition of the provision of technical assistance, brokering services or other services and the provision of financing or financial assistance related to dual-use items. The redrafted Article 2a imposes (again subject to narrow exceptions) the prohibition of the export of certain goods and technologies that might contribute to Russia's technological enhancement in the defence and security sector (new Annex VII); the prohibition of the provision of technical assistance, brokering services or other services and the provision of financing or financial assistance related to these goods has been similarly imposed. According to Article 2e it shall be prohibited to provide public financing or financial assistance for trade with, or investment, in Russia. Articles 3b and 3c prohibit the export- again subject to narrow exceptions - of certain goods and technology that can be used for oil refining (Annex X) or that are suited for use in aviation or the space industry (Annex XI); they also prohibit the provision of technical assistance, brokering services or other services and the provision of financing or financial assistance related to these goods. Pursuant to Article 5 et seq. the already existing financial restrictions were further extended, in particular, the restrictions concerning the access of various Russian entities to the capital markets. It will also be prohibited to list and provide services on trading venues within the Union for shares in state-owned Russian companies. It also introduces new measures that significantly restrict financial inflows from Russia to the Union by prohibiting the acceptance of deposits from Russian nationals or natural persons residing in Russia in excess of certain amounts, the maintenance of accounts of Russian customers by Union central securities depositories and the sale of euro-denominated securities to Russian customers.

- Council Regulation (EU) No **2022/330** of 25 February 2022:
  Amendment of the definition of persons, entities and bodies to be sanctioned pursuant to Article 3 (1) of Council Regulation (EU) No **269/2014**: In Article 1 (d) the restriction to eastern Ukraine was deleted and the list of persons, entities and bodies to be sanctioned was therefore expanded to include the persons, entities and bodies responsible for the destabilisation of Ukraine as a whole. A new addition is that sanctions may also be imposed on those natural or legal persons, entities or bodies supporting, materially or financially, or benefiting from the Government of the Russian Federation, which is responsible for the annexation of Crimea and the destabilisation of Ukraine (lit. f), leading business persons or legal persons, entities or bodies involved in economic sectors providing a substantial source of revenue to the Government of the Russian Federation (lit. g). In addition, natural or legal persons, entities or bodies associated with the natural or legal persons, entities or bodies listed in lit. a) to g) may also be sanctioned.

- Council Implementing Regulation (EU) **2022/332** of 25 February 2022:
  Another 99 natural persons were added to the sanctions list under Regulation (EU) **269/2014**, which again included numerous members of the Russian State Duma, but also various Belarusian military officers and politicians, high-ranking Russian representatives, and last but not least Interior Minister Vladimir Kolokoltsev, Foreign Minister Sergei Lavrov and President Vladimir Putin.

- Council Regulation (EU) No **2022/334** of 28 February 2022:
  further amendment to Council Regulation (EU) **833/2014:** Pursuant to the new Article 3 d), Russian aircraft are prohibited from overflying the territory of the Union and from taking off and landing in the territory. Article 5 a) was amended to prohibit transactions related to the management of reserves as well as assets of the Central Bank of Russia, including transactions with any legal person, entity or body acting on behalf of or at the direction of the Central Bank of Russia.

Legal consequences of inclusion on the "sanctions list"

Pursuant to Article 2 (1) of Regulation (EU) No 269/2014, all funds and economic resources belonging to natural or legal persons, entities or bodies listed in Annex I shall be "frozen". For (German and European) economic operators, however, the "prohibition to make funds or economic resources available" standardised in Art. 2 (2) and generally binding in all Member States is much more significant: This states: "*No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of natural persons or natural or legal persons, entities or bodies associated with them listed in Annex I*". Since, on the one hand, "funds" are included and, on the other hand, "economic resources" as defined in Article1 (d) are assets of any kind, whether tangible or intangible, movable or immovable, which are not funds but may be used to obtain funds, goods or services, this means that all (commercial) goods are prohibited as is the mere "indirect" provision of such goods (which would be the case, for example, if the listed person holds a majority controlling interest in the recipient of the funds or goods). Therefore, this prohibition - apart from in a few exceptional circumstances - effectively acts as a total embargo on the listed persons, bodies and entities.

Author

Ole-Jochen Melchior
Lawyer, Partner
Essen

Impact of sanctions on existing contractual relationships

The sanctions imposed have a direct impact on existing contractual relationships. In many cases, they now prohibit economic operators from exchanging services without hindrance, both in terms of goods and the corresponding monetary flows. As a result, the sanctions will trigger contractual performance issues in many cases. The unhindered performance of a contract is therefore no longer easily possible - even though this may still be the intention of the respective contracting parties. Sometimes legal consequences may arise by operation of law over which the parties have no influence whatsoever.

If, for example, a German company is affected by the latest economic sanctions in its cross-border contractual relationships, the question arises as to what fate will befall the contract with a Russian company or state body and whether there are any legal options available to it to extricate itself from its contractual obligations. Furthermore, it is often of interest to assess whether this may give rise to a liability for damages or how the resulting entrepreneurial risks can be mitigated through an appropriate legal structure.

In accordance with the principles of good faith and Section 241 (2) of the German Civil Code (*Bürgerliches Gesetzbuch,* BGB), the German entrepreneur is obliged in any event to inform the contractual partner that he will not be able to provide his services in the future and why.

1. Validity of the contract?

Contractual relationships subject to economic sanctions could be or become void under Section 134 BGB. This states that a legal transaction that violates a statutory prohibition is void. This is also recognised under the so-called secondary Union law. Accordingly, a sanction imposed by EU regulation may constitute a prohibition law. Nullity is to be assumed if the EU

regulation is directed against both business partners or against the content of the legal transaction. Subject to the circumstances of the individual case, this is quite possible in view of how this has been treated in case law in comparable cases in the past (Iraq, Syria and Iran embargoes) and based on the meaning and purpose of the recently issued provisions of the sanction regulations (in particular Council Regulation (EU) No 2022/263 and No 2022/328 of 23 February and 25 February 2022). A contract covered by this could therefore already be invalid by operation of law. The same may apply to import and export bans under the Foreign Trade and Payments Act (AWG). Whereas export bans issued under this Act are regularly to be regarded as prohibition laws within the meaning of Section 134 BGB, statutory *import restrictions* are generally to be regarded only as rules of order which do not call into question the validity of the contract as such. The AWG is therefore not applicable where a legal transaction concerning foreign goods does not relate to their prohibited import.

Further questions arise with regard to the impact over time of the regulations adopted. There is no reason to fear that the sanctions will have a retroactive effect on validly concluded and settled contracts; however, a future exchange of services within an existing and ongoing framework agreement is likely to lead as a rule to the automatic nullity of the respective contract due to its contractual autonomy.

2. Contractual means for amendment or termination

If the contract is not covered by automatic nullity or is, by way of exception, only partially null and void pursuant to Section 139 BGB, the principle of "**pacta sunt servanda**" (agreements must be kept) applies. It establishes the principle of contractual compliance and states that there is no arbitrary right to terminate contracts. Naturally, this principle does not apply to an unlimited extent. There is sometimes a need for the contract to be amended or be terminated in its entirety.

Termination rights are often already anchored in the **contract** and can be exercised. So-called **force majeure clauses or hardship clauses** come into consideration. The former governs the rights to refuse performance in the event of force majeure. This may also include civil unrest, war or terrorist conflicts that have unforeseeable consequences for the performance of services. Such force majeure clauses release the contracting parties from their performance obligations for the duration of the disruption and to the extent of the disruption, but without necessarily giving rise to a right to terminate the entire contract. General Terms and Conditions (GTC) may also include such provisions. The currently known circumstances in Ukraine support the assumption of a force majeure event.

3. Statutory rights to refuse performance

The law provides for a comparable provision in **Article 79 (1) of the United Nations Convention on Contracts for the International Sale of Goods (CISG**). Under this Convention, a party shall not be liable for a failure to perform any of its obligations if it proves that the failure was due to an impediment beyond its control and that it could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome such impediment or its consequences. However, it is a prerequisite that the contract is subject to the CISG. The Russian Federation is a party to the CISG. However, the existence of a sales agreement is a mandatory requirement. The other conditions of Article 79 (1) CISG are also likely to be met, so that a right to refuse performance should exist.

If the contract is not rendered invalid by operation of law, but the contractually agreed performance is likely to violate applicable law, the obligor may, depending on the specific circumstances of the individual case, apply **Section 275 BGB (impossibility)**, since it is legally impossible for the obligor to perform or in any event only possible under disproportionate circumstances. This shall release the obligor from its main obligation to perform, but shall not affect the remainder of the contract. Irrespective of the question of a violation of the law, the impossibility to perform must be permanent for the refusal of performance under Section 275 BGB to apply. By its very nature, this is difficult to predict in the case of armed conflicts. However, a merely temporary impossibility shall be deemed equivalent if it calls into question the achievement of the business purpose and the other party to the contract cannot reasonably be expected to adhere to the contract until the impediment to performance has ceased to exist. It cannot be ruled out that a contractual partner will then rely on rights such as withdrawal from the contract or even compensation for damages, although the legal assessment regarding this depends on the individual case.

Insofar as the contract is or remains effective, statutory **rights of resolution (termination or withdrawal)** may arise from Section 313 BGB or Section 314 BGB. Under Section 313 BGB, a contract may be amended or, as a last resort, the contract may be rescinded if circumstances that have become the basis of the contract have changed to a serious extent after

the contract was concluded and the parties would not have concluded the contract or would have concluded it with different contents if they had been aware of these circumstances (so-called "interference with the basis of transaction" or in German "*Störung der Geschäftsgrundlage*"). Finally, in the case of long-term contracts, extraordinary termination for good cause may be considered, Section 314 BGB.

Arrangements made prior to executing the contract

If arrangements have already been made based on the unhindered performance of the contract, for example by a German company making an advance payment, the question arises as to whether and how this can be recovered. Advance payments can only be recovered by withdrawing from the contract or in the event of the nullity of the contract in its entirety, because the contractual basis for retention thereby no longer applies. At the same time, withdrawal prepares the way for seizing the goods delivered under conditional ownership.

Ultimately, the specific circumstances of the individual case are always decisive.

Author

Dr Kuuya J. Chibanguza, LL.B.

Lawyer, Certified Specialist in International Business Law, Partner
Hanover

Impact on arbitration proceedings

The sanctions imposed on the Russian economy will not only affect business relationships, but also the settlement of disputes arising from them through arbitration courts.

The following overview is not necessarily exhaustive. Neither are the sanctions final - rather, a constant evolution is to be expected - nor are all situations comparable. Each case must be assessed individually.

1. Which arbitral tribunal has been agreed?

It will first depend on what kind of arbitral tribunal you have agreed upon and where it or the arbitration institution is located. If you have agreed on a Russian arbitral tribunal in your contracts, such as the International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation (ICAC), it is unlikely that the arbitral tribunal constituted according to its rules may and will even consider the sanctions under Russian law. This then raises further questions if, for example, an arbitral award is made against you that does not take the sanctions into account.

An EU-based arbitral tribunal will have to take the EU sanctions into account. In principle, these do not preclude the conduct of arbitration proceedings. In general, arbitration institutions have to take more administrative steps than normal in disputes involving sanctioned companies. These include, for

example, a detailed compliance review and dialogue with the relevant government authorities on the practical aspects of the measures required in an - anticipated - EU regulation. This increased administrative burden on the arbitration institutions will perhaps have a negative impact on the duration of the proceedings, but certainly on the costs of arbitration.

2. What problems can arise?

The far-reaching EU sanctions also have an impact on the actual conduct of the arbitration proceedings, so that the parties to the arbitration must be prepared for some special features and adjustments.

Another problem in this context - but one that can affect all stages of the arbitration process - is that banks are often reluctant to facilitate transactions involving funds belonging to or originating from sanctioned states. Costs must be paid for arbitration proceedings, not only for the arbitration institution, but also as security for the costs of the arbitrators' fees. In connection with sanctions against Iran, it has become apparent that some banks have become extremely cautious and do not want to accept funds in connection with such proceedings, regardless of by whom they are paid. At the very least, this can cause severe delays to the arbitration proceedings.

The freezing of assets and restriction of monetary transactions by excluding many banks from SWIFT traffic may have a significant overall impact on a party's ability to pay advances on costs or security deposits, making it overall more difficult to pay for legal services. And although one would hope that exemptions for the provision of legal services could be applied in these cases (see Article 4 of Council Regulation (EU) No 269/2014) it may be necessary depending on the wording of a sanction provision to apply for specific authorisation.

3. Injunction in Russia against arbitration?

Article 248 of the Russian Commercial Procedural Code ("APC") had already been amended in June 2020 so that Russian citizens and companies affected by sanctions have the right to file a lawsuit at their place of residence or registered office (legal entities), even if there is a valid arbitration agreement. The Russian party may also even obtain an injunction in Russian courts against the conduct of court or arbitration proceedings abroad. Courts broadly interpreted this earlier this year to mean that the existence of sanctions in and of itself is sufficient to constitute impairment, regardless of any specific impairment.

4. Conclusion

An arbitration agreement with a Russian party affected by sanctions is no longer the unproblematic best way forward for dispute resolution (although better than court proceedings). Even the initiation of proceedings can be difficult. In certain circumstances the Russian party may not contribute to the costs of the proceedings and a sanctioned Russian party may unilaterally rely on the jurisdiction of Russian courts despite a valid arbitration agreement, without having to demonstrate (practical) difficulties in participating in the arbitration outside Russia. It may also seek to have the conduct of the foreign arbitration proceedings prohibited.

This fundamentally creates the risk of conflicting decisions. Careful planning of the process strategy is therefore required.

Author

Dr Richard Happ
Lawyer, Partner
Hamburg

Impact on investment protection

Russia's invasion of Ukraine also raises questions of the protection of foreign investments in Ukrainian territory under international law. German companies in particular are active in various sectors in Ukraine. Should such German investments be damaged, destroyed or expropriated in the course of the current military conflict or an occupation of parts of Ukrainian territory, the question of legal protection options arises.

Judicial remedies as the situation develops

With a view to effective legal protection, it will be of primary importance how the armed conflict in Ukraine, which was started by Russia in violation of international law, continues. It is true that the international humanitarian law applicable in armed conflict protects in particular the civilian population and civilian property from attack. However, on the one hand, this protection is not absolute, and on the other, a violation of international humanitarian law does not necessarily give rise to a claim for compensation on the part of the individual - and certainly not a right to enforce it in a neutral forum.

It is also questionable whether legal protection would result in judgments in Ukrainian courts in favour of the claimants that are enforceable against Russia. However, proceedings before Russian courts are likely to be even less promising. The path to the European Court of Human Rights (ECtHR), which - to the extent reasonable - requires that legal remedies be exhausted, is also unlikely to promise much success in this respect. It is true that Article 1 (1) of the 1st Additional Protocol to the European Convention on Human Rights (ECHR) guarantees the protection of property. However, the effectiveness of this protection of private parties in terms of economic damage leaves much to be desired, especially with regard to Russia. For example, Russia has already refused to comply with ECtHR rulings in cases, citing constitutional law that precludes compensation.

Options for arbitration proceedings

Ukraine will not be held liable for any damages on the basis of investment protection treaties. Although it is true that most in-

vestment protection treaties contain a clause obliging states to provide the best possible protection for foreign investments, this is always only a “best efforts” commitment, which can hardly be violated in view of the superiority of Russian troops. On the other hand, the German-Ukrainian Investment Treaty contains in any event a clause under which investors may only insist on equal treatment with Ukrainian nationals in the event of war-related damage.

However, should Russia permanently occupy or even annex parts of Ukraine, investment treaties with Russia could become relevant. Although, in principle, these treaties only bind states with regard to investments made in their territory, various investment arbitration tribunals have already affirmed their jurisdiction on the basis of the Russian-Ukrainian Investment Protection Treaty with regard to expropriations in Crimea, which has been annexed since 2014 in violation of international law, and have subsequently also ordered Russia to pay damages. In the meantime, the Swiss Federal Court confirmed in annulment proceedings brought by Russia that de facto Russian control over Crimea is sufficient to extend the applicability of an investment treaty to the peninsula. A similar practice would be expected with respect to expropriation or other actions that harm investments in the context of a Russian occupation of additional Ukrainian territories.

Injured parties from Germany could also successfully defend themselves against Russian expropriation measures. Since 1989, the Federal Republic of Germany has maintained a Bilateral Investment Treaty (BIT) with Russia, on the basis of which investors can pursue proceedings to protect their own investments. A special feature here is that submitting to the arbitration clause under this treaty is limited to disputes relating to the free (bank) transfer of capital and disputes over compensation levels and procedures in the event of expropriation. However, a prominent arbitration case based on the treaty makes clear that at least arbitration claims for expropriation are possible without restriction under Article 10 (2) of the BIT. The award in the case Sedelmayer versus Russia indicates in this respect that disputes as to whether expropriation for which compensation is due exists at all are also covered by Article 10 (2) of the BIT.

The situation in the separatist oblasts

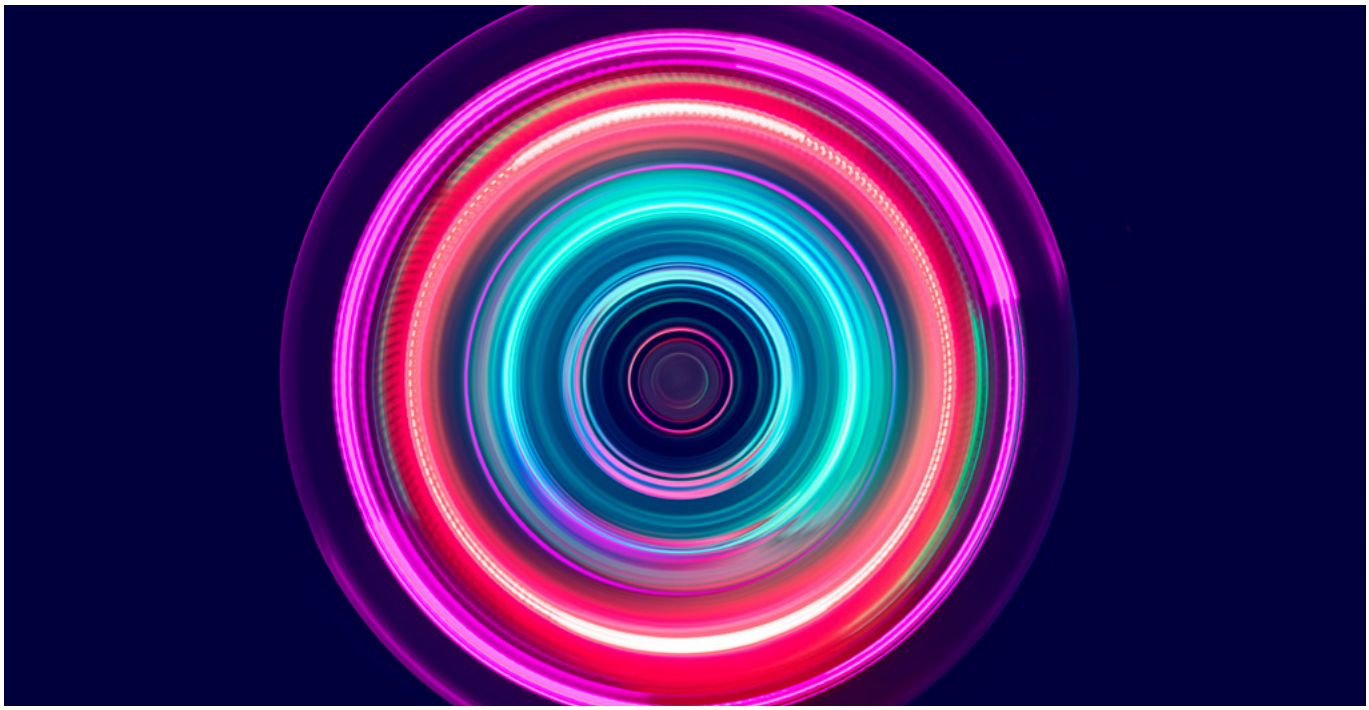
Once again, the situation is different in eastern Ukraine. Russian-backed separatists were previously in control in the self-proclaimed “people’s republics” of Donetsk and Luhansk - which remain part of Ukraine under international law. Should Russia not also formally exercise sovereignty here in the future in violation of international law, the question arises whether it can be nevertheless assumed that the Russian investment treaties apply in these oblasts. Ultimately, the decisive factor will be whether Russia exercises sufficiently strong control over the separatists under the rules governing the attribution of conduct in violation of international law - and whether this can be demonstrated in the proceedings.

Author

Dr Richard Happ
Lawyer, Partner
Hamburg

Impact on energy policy

German energy policy is facing a turning point. The trigger is the realignment of German security policy in light of the events in Ukraine.



The Federal Government's goal is "energy sovereignty." This means overcoming the dependence on Russian imports for fossil fuels over the short to medium term. 55 percent of all gas supplies, 50 percent of coal and 35 percent of crude oil are currently imported from Russia.

In order to become self-sufficient in terms of energy, Minister Habeck had already presented the "Precautionary Plan - Strengthening Crisis Preparedness to Ensure Security of Supply" on 24 February 2022. The key points are:

1. Acceleration of the energy transition

This means first and foremost a faster expansion of renewable energies, which are to replace gas and oil. This is to be accompanied by the electrification of heat and transport and faster approval procedures for renewable energy plants.

2. Precautionary mechanisms for oil

The National Strategic Petroleum Reserve will be released to the extent necessary. Petroleum and petroleum products equivalent to the net quantities imported into Germany over a 90-day period (15 million tons of crude oil, 9.5 million tons of finished petroleum products such as gasoline, diesel fuel, heating oil and jet fuel) are held at all times in this reserve.

3. Precautionary mechanisms for gas

Unlike for oil, Germany has no strategic reserves of gas. The Federal Government will use so-called long-term options in the short term in order to significantly increase gas storage levels from the current level of around 30 percent. According to its own information, these are "... special auctions, which are held in consultation between the Federal Ministry for Economic Affairs and Climate Action (*Bundesministerium für Wirtschaft und Klimaschutz*, BMWK), the Federal Network Agency (*Bundesnetzagentur*) and market area coordinators in order to purchase additional capacity on the market".

The Federal Government wants to legally require gas storage operators to maintain defined fill levels at various points in time to ensure gas supply security next winter.

The first German LNG terminals are to be built in Brunsbüttel and Wilhelmshaven to supply gas in the medium term. The plants are to be designed in such a way that they will also be suitable for hydrogen and ammonia in the future.

4. Precautionary mechanisms for coal

In order to reduce dependency here as well, the Federal Network Agency is to work with operators to not only accelerate the procurement and establishment of reserves for coal through a supply plan, but also to diversify coal supply chains. The supply plan explicitly states that the "...best medium-term response to import dependence ... is to phase out coal, gradually by 2030."

On 27 February 2022 Minister Habeck did not generally reject the obvious question of a "withdrawal from the nuclear withdrawal". All options would be on the table. However, he indicated that, to his knowledge, there were probably insurmountable technical obstacles. Further developments are still expected here.

To ensure the current energy supply, the ministry says it has set up task forces to monitor it.

To effectively address these drastic developments, companies must immediately stress test their current fossil fuel supply situation and adapt their decarbonisation plans to the new realities and, most importantly, incorporate them in an accelerated phase-out plan. The clock is ticking.

In the historic Bundestag session on 27 February 2022, Minister Habeck literally said:

"But we will also have to significantly accelerate the phasing out of fossil fuels and stop talking about decades at this point. We will therefore present a plan for phasing out fossil fuels and implement it with great vigour."

Author

Dr Gernot-Rüdiger Engel
Lawyer, Partner
Hamburg

Authors of this issue

Ole-Jochen Melchior

Lawyer, Partner
Luther Rechtsanwaltsgesellschaft mbH
Essen
T +49 201 9220 24028
ole.melchior@luther-lawfirm.com

Dr Kuuya Josef Chibanguza, LL.B.

Lawyer, Certified Specialist in International business Law, Partner
Hannover
T +49 511 5458 16837
kuuya.chibanguza@luther-lawfirm.com

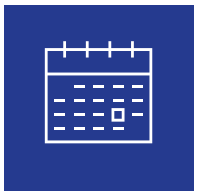
Dr Richard Happ

Lawyer, Partner
Hamburg
T +49 40 18067 12766
richard.happ@luther-lawfirm.com

Dr Gernot-Rüdiger Engel

Lawyer, Partner
Hamburg
T +49 40 18067 16639
gernot.engel@luther-lawfirm.com

Events, publications and blog



You will find an overview of our events here.

You will find a list of our current publications here.

You will find our blog here.

Legal information

Published by: Luther Rechtsanwaltsgesellschaft mbH
Anna-Schneider-Steig 22, 50678 Cologne, Germany
Telephone +49 221 9937 0
Fax +49 221 9937 110, contact@luther-lawfirm.com
Responsible for the content (V.i.S.d.P.): Ole-Jochen Melchior
Luther Rechtsanwaltsgesellschaft mbH
Gildehofstraße 1, 45127 Essen,
Telephone +49 201 9220 24028
ole.melchior@luther-lawfirm.com

Picture credits: Negro Elkh/Adobe Stock: Page 1; Grecaud Paul/Adobe Stock: Page 3; Cecilie Arcur/iStockphotos: Page 6; Bits&&Splits/Adobe Stock: Page 8; WilliamPotter/iStockphotos: Page 9; Sunyixun: Page 12

Disclaimer

Although this newsletter has been carefully prepared, no liability is accepted for errors or omissions. The information in this newsletter does not constitute legal or tax advice and does not replace legal or tax advice relating to individual cases. Our contact persons at the individual locations are available for this purpose.

Luther.

Bangkok, Berlin, Brussels, Cologne, Delhi-Gurugram, Dusseldorf, Essen, Frankfurt a.M., Hamburg, Hanover, Jakarta, Kuala Lumpur, Leipzig, London, Luxembourg, Munich, Shanghai, Singapore, Stuttgart, Yangon

You can find further information at:
www.luther-lawfirm.com
www.luther-services.com

unyer GLOBAL ADVISORS