

Since March 2014, the European Union has adopted a series of restrictive measures against Russia, in the context, first, of the illegal annexation of Crimea and Sevastopol and then, more recently, in response to Russia's acts of aggression against Ukraine.

More than 80 decisions and regulations have been successively adopted by the Council, under the Common Foreign and Security Policy (CFSP) framework, more precisely article 29 of the Treaty on European Union (TEU) and article 215 of the Treaty on the Functioning of the European Union (TFEU).

Each new package of sanctions has included further and broader restrictions: new criteria for individual designations and new sectoral sanctions have been added almost every month since the beginning of Russia's war of aggression on Ukraine, to the effect that the Russian sanctions regime is one of the most thorough and complex system ever established.

The latest package of sanctions adopted on 6 October 2022¹ includes a new restriction, overlooked by most, lost in the midst of these dozens of decisions: it is now forbidden to provide "legal advisory services" to "legal persons, entities or bodies established in Russia".

The Council has defined legal advisory services as "*the provision of legal advice to customers in non-contentious matters, including commercial transactions, involving the application or interpretation of law; participation with or on behalf of clients in commercial transactions, negotiations and other dealings with third parties; and preparation, execution and verification of legal documents. [They] do not include any representation, advice, preparation of documents or verification of documents in the context of legal representation services, namely in matters or proceedings before administrative agencies, courts or other duly constituted official tribunals, or in arbitral or mediation proceedings.*"

As such, while the prohibition does not apply in contentious matters and judicial proceedings, lawyers are now strictly prohibited from offering legal advice to Russian entities.

The decision does include narrowly defined exceptions related to contracts that predate the adoption of sanctions and authorizes national competent authorities to grant permissions to provide legal services if it is necessary for "*humanitarian purposes such as delivering or facilitating the delivery of assistance, including medical supplies, food, or the transfer of humanitarian workers and related assistance, or for evacuations*" and "*civil society activities that directly promote democracy, human rights or the rule of law in Russia*".

¹ COUNCIL [DECISION](#) (CFSP) 2022/1909 of 6 October 2022 amending Decision [2014/512/CFSP](#) concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine; COUNCIL [REGULATION](#) (EU) 2022/1904 of October 2022 amending Reg (EU) [833/2014](#) concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine

Another derogation has interestingly been added: the prohibition does not apply if the legal entity established in Russia is “*solely or jointly controlled by, a legal person, entity or body which is incorporated or constituted under the law of a Member State, a country member of the European Economic Area, Switzerland or a partner country*”. Partner countries include Japan, South-Korea, the United Kingdom and the United States.

There is therefore no doubt that the prohibition is based on a nationality criterion, which, clearly constitutes a blatant breach of the prohibition of discrimination on grounds of nationality of article 18 of the TFEU.

This restriction, in an unprecedented manner, affects our ability, as lawyers, to freely and independently provide counsel to our client and the fundamental principles at the core of our profession, guaranteed by numerous international instruments, both at the UN and Council of Europe.²

As discussions are ongoing, to strengthen the protections afforded to lawyers and a Working Group has been established to draft a European Convention on this topic, it is crucial for all our associations, national, regional, and international to voice their concerns, when our ability to exercise our functions freely, as our oaths required, has been hindered.

The willingness of the European Union to respond to the acts of aggression committed against Ukraine cannot not lead the Council to the adoption of measures that do not comply with fundamental norms of international law, at the detriment of the rule of law it seeks to promote.

² See for instance, [The Basic Principles on the Role of Lawyers](#) or [Recommendation No. R\(2000\)21 adopted by the Committee of Ministers](#).