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## The Impact of the International Sanctions Against Russia on the French Insurance Market

Frédérique BANNES

➤ Depuis qu'elle a envahi la Crimée en 2014, la Russie fait face à de nombreuses sanctions internationales. Ces sanctions ont été renforcées depuis l'agression de la Russie contre l'Ukraine en février 2022. Quel impact ces régimes de sanctions – internationaux ou nationaux – peuvent-ils avoir sur les (ré)assureurs, les courtiers en (ré)assurance, leurs clients et leurs partenaires commerciaux français ?

➤ Desde que invadió Crimea en 2014, Rusia se ha enfrentado a numerosas sanciones internacionales. Estas sanciones se han reforzado desde la agresión de Rusia contra Ucrania en febrero de 2022. ¿Qué impacto pueden tener estos regímenes de sanciones – internacionales o nacionales – en las aseguradoras y corredores de seguros franceses, sus clientes y socios comerciales?

When President Putin characterized Russia's aggression in the Ukraine to be not a war, this statement affected foreign company exposure from an insurance perspective given that wars were often excluded from insurance policy coverage. Foreign companies however were in the position of growing risks related to assets confiscation, currency, local strikes and riots, together with major reputational risk factors if maintaining their activities in Russia resulted in accusations of their supporting the Russian military operations in Ukraine.

For the moment the insurance programs are impacted by an array of international sanctions targeting the Russian (and Belarusian) government, entities, and individuals, and by the losses suffered by the foreign companies due to their Ukrainian exposures. The sanctions regimes are heterogeneous, quickly evolving, and they include many exemptions and implementation schedules, making the interpretation of the executive orders difficult. The insurance market strives to manage its impact on their business activities and their clients' ones.

These sanctions are falling into three main categories:

### I. The Sectoral Sanctions

These sanctions target not only the business activities of military defense, energy, IT technology, finance, aeronautics, maritime, road and air transport, as well as dual-use civilian and military goods, but also wide lists of banned products, the related financial services such as an insurance coverage of these banned products being also prohibited.

The sanctions are already reverberating in the area of insurance coverage. In the aviation sector, for example,

European companies no longer fly to Russia, which has closed its airspace to planes from 36 countries in retaliation for Western sanctions. In turn, the EU has ordered bans on overflight of airspace and access to airports in the EU for all types of Russian carriers. (Regulation n° 2022/335 of 28/02/2022 Article 4 e). The results on the insurance market are threefold: (1) flights to and from Russia are no longer insurable, (2) financial flows (collecting insurance premiums, settling the claims) are blocked, and (3) insurance coverages are either suspended or cancelled.

### II. The Embargoes

These are U.S. specific embargoes on oil, gas, and coal imported from Russia, such as the one imposed by the USA on 8 March 2022, including the U.S. financing to companies investing in energy production in Russia. A similar embargo was implemented by the EU. It's important to notice that even though Russia is not under a total embargo for the moment, some insurers at the request of their reinsurers decided to exclude Russia and Ukraine from the renewals or the new insurance policies. Ukrainian exposures were already subject to sub-limits in the insurance policies. Since the Russian invasion in Crimea in 2014, and the present situation increasing the risks, the (re)insurers are worried about their financial capacity to face an important volume of losses and claims.

### III. The Financial Sanctions

These are a series of heavy financial sanctions imposed by mainly the European Union, the United States, Canada, and





the United Kingdom against Russia and, to a lesser extent, against Belarus. Notably, Switzerland and Monaco have adopted the European financial sanctions. These sanctions target political figures, oligarchs, public and private companies, and their directors across many sectors, including but not limited to: (1) energy, (2) transport, (3) defense, (4) fertilizers, (5) telecommunications, (6) luxury goods, (7) real estate, (8) ships, (9) aircrafts, (10) banks, and (11) certain Russian insurers.

Individuals and entities classified as Specially Designated Nationals (SDNs) are subject to a freeze on their assets, funds, and economic resources, to a ban on financial transactions, and to the seizure of movable property and real estate. Consequently, some banks and insurers in Europe, worried about running the risk to unwillingly breach any sanctions regime, decided to stop their financial operations, or to not renew insurance contracts, not only with Russian SDN listed but also with not listed Russian citizens domiciled

The EU insurers now recommend that the clients set up pluri-annual insurance policies and stand-alone insurance policies underwritten and reinsured locally in Russia for their local exposures if any.

in the EU! In addition to this, certain Russian banks are barred from using the SWIFT system and the financial transactions with the Russian Central Bank have been blocked. As a result, some insurance players (Generali, Marsh, Willis, AON), have decided to close their local offices or to withdraw from Russia even though for the moment there is no disruption in the services to clients. In turn, Russia adopted a law on 14 March 2022 prohibiting

the reinsurance of local policies by the Russian public reinsurer with this having a direct impact on the international programs of insurance for foreign companies exposed in Russia. The EU insurers now recommend that their clients set up pluri-annual insurance policies and stand-alone insurance policies underwritten and reinsured locally in Russia for their local exposures if any.

Many insurance coverages underwritten in France have been suspended, with the amounts of premiums and indemnities being placed by the (re)insurers and the (re) insurance brokers concerned in dedicated bank accounts until the French Treasury Administration reaches a determination concerning said assets. Many credit insurance policies underwritten by private companies to guarantee their investments and exports to Russia and Belarus are beginning to be activated due to the freezing of transactions with Russian banks and the payment defaults. This could lead to disputes over how insurance contracts are interpreted and implemented, depending on how they are drafted.

In France, the (re)insurers and the (re)insurance brokers are bound by the same legal and regulatory requirements as other financial institutions, such as banks, regarding compliance issues and international sanctions. The logic

of the international sanctions mechanism is based on the principle of a direct or indirect association with Russia. Consequently, it is not enough for the (re)insurers and the (re)insurance brokers, or their clients, to simply analyze their exposure regarding their activities in Russia, but rather to carry out a risk analysis including their clients, the beneficiaries of insurance services, the business partners, the service providers, the suppliers, and subcontractors.

They will be expected to know whether they are of Russian nationality, operate in Russia, or have a direct or indirect link with Russia. The (re)insurers and the (re)insurance brokers, like the banks, carry out "know your client/know your supplier" security checks before collecting premiums or financial commissions or settling indemnities, so as not to run the risk of being at the origin of a prohibited financial flow. These risk analysis measures also apply to Belarus. In addition, the insurance actors must evaluate whether their operations in Russia or connections with Russian clients/partners put their clients at risk and must ensure that the latter have analyzed the lawfulness of their operations and obtained the necessary authorizations from the French Treasury Administration.

In France, the (re)insurers and the (re)insurance brokers, like their clients, have an obligation with respect to the enforcement of the sanctions and the asset freeze regimes. Under French law, if a company does not comply with the European sanctions regime, it exposes itself, its directors and officers, and its employees, to civil and criminal penalties that could be up to five years of jail and a fine equivalent to twice the amount of the offence.

Thus, any employee of an insurance company, or a broker within a claims handling delegation, who breaches the EU sanction regime by making for instance an unauthorized payment of a claim would risk civil and criminal liability, to itself as well as its employers and directors (Art. 131-27 and 131-39 of the French Criminal Code; Art. L. 574-3, L. 562-4, L. 713-16 of the French Monetary and Financial Code; Art. 459 of the Customs Code). Likewise, if any foreign subsidiary of a French group breaches the sanctions regimes, whichever it might be, its director and the directors of the parent company would incur their liability. In 2015, the French bank BNP Paribas was fined a record \$8.9 billion USD for circumventing, between 2000 and 2010, the US embargos on Cuba, Iran, Sudan, and Libya.

Some exceptions to the sanctions regimes exist without requiring permission from the French Treasury Administration based on the principle of the respect for fundamental rights, such as children's school insurance, health expenses, and car insurance premiums (car insurance being a legal compulsory insurance coverage). Similarly, the freezing of assets does not affect the right to a real and effective defense. Assets can be unfrozen for legal expenses and lawyer's fees that are considered justifiable. In addition, private non-governmental organizations (NGOs) providing humanitarian aid may be exempt, subject to the validation by the French Treasury Administration. Finally, people affected by an asset freeze measure and who cannot find





an insurer may benefit from a third-party action mechanism for the following four categories of compulsory insurance: (1) motor vehicle civil liability, (2) construction insurance, (3) natural disaster coverage, and (4) medical malpractice liability insurance.

Regarding sensitive issues such as international sanctions, the fight against money laundering, and the financing of terrorism (AML-FT) or anti-bribery, the (re)insurers and (re) insurance brokers, as regulated professionals, are subject in France to the provisions of the Monetary and Financial Code, as well as those of the French Insurance Code. They must be able to refrain from entering into or pursuing a business relationship following a risk analysis of a client or a partner

in order to avoid any legal, financial, and reputational risk. In any case, the decisions to initiate, maintain, or withdraw from a risky business relationship must be validated on a case-by-case basis by the governance of the companies concerned, whether they are insurance companies, insurance brokers, their clients, or partners at the heart of the regulatory risk prevention and management systems with the support of their lawyers and experts. ■

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## Entreprises françaises en Russie : une responsabilité morale ou pénale ?

On 21 March 2022, the Ukrainian army firmly condemned the decision of Leroy Merlin to keep its stores opened in Russia, accusing the company of being the first *"in the world to finance the bombing of its own stores and killing its own employees"*. While the continued presence of French companies in Russia is without a doubt morally questionable, it is not certain that it would be sufficient to characterize an act of complicity for the crimes committed in Ukraine. One could also wonder if these companies could also be placed on the European sanctions list, in light of the existing criteria.

El 21 de marzo de 2022, el ejército ucraniano condenó firmemente la decisión de Leroy Merlin de mantener sus tiendas abiertas en Rusia, acusando a la empresa de ser la primera *"del mundo en financiar el bombardeo de sus propias tiendas y en matar a sus propios empleados"*. Si bien la permanencia de las empresas francesas en Rusia es sin duda moralmente cuestionable, no es seguro que sea suficiente para caracterizar un acto de complicidad por los crímenes cometidos en Ucrania. También cabe preguntarse si estas empresas podrían figurar también en la lista de sanciones europeas, a la luz de los criterios existentes.

Le 21 mars 2022, l'armée ukrainienne a fermement condamné la décision de l'entreprise française Leroy Merlin de continuer à opérer en Russie, l'accusant d'être « la première société à avoir financé le bombardement de ses magasins et le meurtre de ses employés. » C'est aussi un des messages qu'a adressé le Président ukrainien, Volodymyr Zelensky, au Parlement français lors de son allo-

cution du 23 mars 2022, demandant aux entreprises de « cesser d'être les sponsors de la machine de guerre russe et de financer le meurtre d'enfants et le viol de femmes ». Alors que les images de corps de civils et les témoignages de victimes de viols continuent d'affluer, il semble de plus en plus évident que les forces armées russes intervenues en Ukraine le 24 février 2022 ont commis et continuent de





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