UKRAINE'S PERSPECTIVE ON ADMINISTERING SANCTIONS:

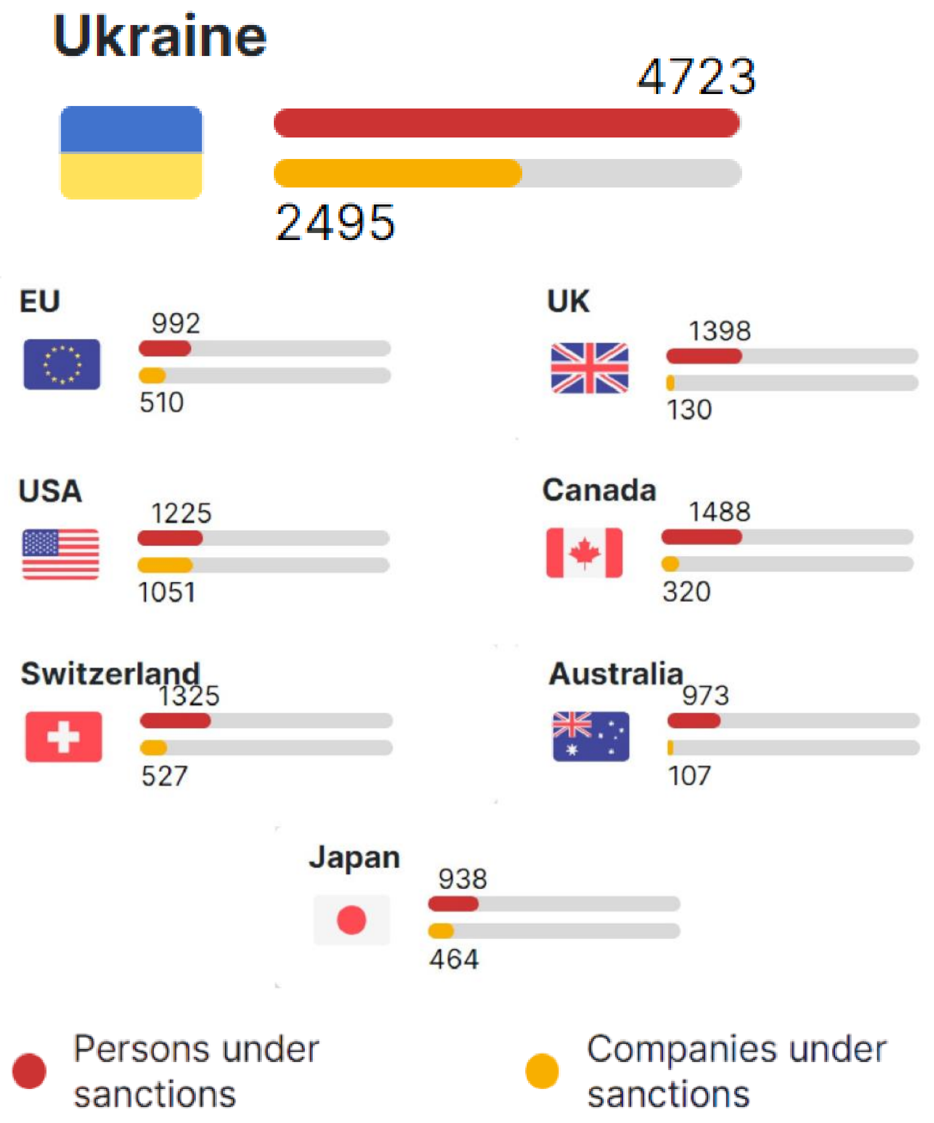
LATEST CASES FOR INTERNATIONALS TO WATCH

Serhiy Yaroshenko,

for NYSBA 2023 Warsaw Spring Meeting, March 2023

Fresh stats:

Ukraine sets the pace in the sanctions landscape since 24/02/2022.



The figures are tentative and, along with the images, are provided from the sanctions database supported by the Ukrainian Ministry of Foreign Affairs and the National Agency on Corruption Prevention,

available at: https://sanctions.nazk.gov.ua/en/

Ukrainian sanctions regime: key details (I)

Legal framework

Ukrainian Law Governing Sanctions

dated 14 August 2014 No. 1644-VII

Ukrainian Agency on Corruption Prevention

- in practice, operates as a compliance authority and outside the Sanctions law
- tracks entities who contribute to Russia's war effort;
- investigates cases of sanctions circumvention and allows for voluntary reporting of such
- maintains a database of entities that are under sanctions or against whom sanctions may be imposed

Authority that effects sanctions

Ukrainian President

Authority that imposes/lifts sanctions

Ukrainian National Security-Defence Council

Authority that proposes for application, variation or revocation of a sanctions designation

Ukrainian Parliament, President, Government, Central Bank, Security Service

Ukrainian sanctions regime: key details (II)

Sanctions effect

By signing a decree, the Ukrainian President effects sanctions of the Security Council

Currently, Ukrainian sanctions are enforceable within the jurisdiction of Ukraine and normally apply on an *ex-parte* basis

International cooperation

Ukrainian Foreign Office advise their foreign vis-à-vis on the applied Ukrainian sanctions and propose that they introduce similar measures overseas

Exclusive discretion

Ukrainian authorities may sanction any legal entity, including a foreign one that, in their opinion, *“poses potential threats to Ukraine’s national interests, national security, sovereignty and territorial integrity"*

Ukrainian sanctions regime: key details (III)

Grounds for sanctions

1) where actions of a foreign state, foreign legal or natural person, other entities (a) create real and/or potential threats to Ukraine's national interests, national security, sovereignty and territorial integrity; (b) facilitate terrorist activity; (c) violate human and citizen's rights and freedoms, public and state interests; (d) lead to the occupation of a territory, expropriation or limitation of property rights; (e) result in property losses, obstacles to sustainable economic development; (f) impede full exercise by Ukrainian citizens of their rights and freedoms
2) where the above actions are carried out against another state, its citizens or legal entities
3) based on resolutions of the UN General Assembly and Security Council
4) based on resolutions and regulations of the Council of the EU and
5) where there have been violations of the Universal Declaration of Human Rights and of the United Nations Charter

Types of sanctions (outlined arbitrarily)

(1) freezing of assets

(2) designation to state treasury of assets recovered from a sanctioned entity

(3) restriction of trade

(4) restriction of transit within Ukraine's territory

(5) prevention of capital withdrawal outside Ukraine

(6) suspension of business and financial obligations performance

(7) annulment of licenses/permits, including for subsoil use

(8) ban on participation in privatisation, lease of state property

(9) ban on acquiring ownership of land plots

(10) bans on transactions that require the Central Bank licensing

(11) suspension of trade agreements and joint projects

(12) ban on transfer of technologies, intellectual property rights

(13) <u>other sanctions that meet the principles of their application under the law</u>

Remedies against Ukrainian sanctions

Ukrainian law allows for revocation or variation of the sanctions designation, by the following means:

Government relations (GR)

- seeking that the Ukrainian Security Council revisit its decision on the designated sanctions
- entails interaction with competent authorities
- includes document exchange, production of evidence in support of the submission that a sanctioned entity is not involved in any activities that do or would undermine Ukraine's national interests

Legal recourse in court

- enables to seek full document production where such has been refused upon the GR effort, and operate within fixed procedural timelines, *circa* 0,5 year in total but those may vary
- the Cassation Administrative Court of the Supreme Court serves as a competent court of first instance
- there is no cassation appeal procedure available
- a lawsuit may initially argue that (i) the sanctions are imposed on the wrong entity, and (2) the grounds and principles of imposing the sanctions are wrongfully used
- the initial claim submission and action strategy may change later in proceedings and after the document production

Case 1 - Parimatch

Leading tech and gaming company

Legal basis

Presidential Decree No. 145/2023 dated 10 March 2023

Sanctioned entities

Parimatch Foundation Limited (Cyprus),
Parimatch United Investments Limited (UK),
Parimatch LLC (Ukraine)

Grounds for sanctions

Russian origin or conducted business with the aggressor-state, as established by Ukrainian intelligence

Effective period, outcomes & resolution status

Sanctions designated for 50 years. Parimatch LLC suspended its operations in Ukraine. E-petition filed with the Ukrainian President seeking revocation of the sanctions

Case 2 - RBI

Legal basis

Presidential Decree No. 50/2023 dated 28 January 2023

Sanctioned entities

Raiffeisen Leasing (Russia), a 100% subsidiary of Raiffeisenbank Russia JSC

RBI (Austria) is not under sanctions but classified by the Ukrainian Agency on Corruption Prevention as an international war sponsor

Grounds for sanctions

Raiffeisen Leasing (Russia) contributed to Russia's war effort, while Raiffeisenbank Russia JSC recognises LNR and DNR terrorist organisations, calls Russia's war against Ukraine a "special operation", operates as one of the few remaining western financial institutions in Russia included in SWIFT system and processes up to 40% of Russia's total Forex money traffic flow

Effective period, outcomes & resolution status

Sanctions designated for 10 years. Property leased by clients of Raiffeisen Leasing (Russia) may be recovered in Ukraine to state treasury. Raiffeisen Bank JSC (Ukraine) continues its operations.

Notably, seeking to receive its dividends from business in Russia in 2022, RBI is in talks with Sberbank regarding a possible asset swap transaction (Project Red Bird). The scheme provides for the transfer of the share in Raiffeisenbank Belarus or of Raiffeisenbank Russia's dividends to Sberbank for an exchange of the latter's subsidiary – Sberbank Europe (Austria) to RBI. Since Sberbank is under sanctions, RBI, to avoid those itself, considers setting up a special purpose vehicle (Red Bird) that would receive 100% share of Sberbank Europe along with all assets and liabilities. Then, Red Bird would transfer to RBI all income made from the sale of Sberbank Europe's assets.

Case 3 - Mashzavod

Producer of equipment for processing, transportation, storage and synthesis of oil, gas and condensate

Legal basis

Presidential Decree No. 726/2022 dated 19 October 2022

Sanctioned entities

Chernivtsi Mashzavod LLC (Ukraine)

Grounds for sanctions

Conducted business with Belarussian and Transnistrian companies ultimately controlled by Russia

Effective period, outcomes & resolution status

Sanctions designated for 5 years banning any trade business. On 28 January 2023, the Security Council decided to lift sanctions, currently pending the signing of a presidential decree to enable revocation of the sanctions

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