



Guidance Note on the Sanctions adopted in response to the current situation in Ukraine

Issued: 3 March 2022

Introduction

The Financial Intelligence Analysis Unit (FIAU) wishes to draw subject persons' attention to the recent sanctions and restrictive measures imposed by several jurisdictions, and especially by the European Union, on multiple individuals and entities due to the recent conflict in Ukraine.

The intention behind this Guidance Note is to remind all subject persons of their obligations under the National Interest (Enabling Powers) Act¹ (NIA) and of how sanctions may impact subject persons' obligations under the Prevention of Money Laundering and Funding of Terrorism Regulations² (PMLFTR) and the Implementing Procedures.

Obligations under the NIA

The European Union (EU) has over the past few days imposed a series of sanctions and restrictive measures related to the recent events in Ukraine. Any sanctions or restrictive measures imposed by the EU are directly applicable and enforceable in Malta. Therefore, every subject person has an obligation to ensure that these are adhered to. Particular attention must be paid to any assets that may be subject to freezing in terms of these sanctions and to the obligations arising from Article 17 of the NIA in relation to the same.

Furthermore, subject persons are reminded of their additional obligations under Article 17 (6) and Article 17 (7) of the NIA and, specifically, to their obligations to:

- **Regularly check relative sanction lists and screen on a regular basis their client databases against the same.** Screening is to be carried out also with respect to prospective or potential customers. One should be aware of any revision or update of a sanction list, which revision or update is to be considered as a triggering event to recheck immediately one's client database. This is especially important in situations like the current one where EU sanction lists are being updated on an almost daily basis.
- **Immediately notify the Sanctions Monitoring Board (SMB) of any identified targeted property and the action taken by the subject person in relation thereto.** Any attempt to carry out transactions involving identified targeted property should also be reported to the SMB.
- **Ensure having in place robust internal controls and procedures** to ascertain compliance and adherence with their sanction screening obligations and effectively implement them in their day-to-day activities.
- **Refrain from informing any customer or any other third party of any freezing measure** taken pursuant to the NIA.

In implementing measures to comply with these obligations, subject persons are to refer to any guidance issued or otherwise made available by the SMB.

¹ Cap 365 of the Laws of Malta.

² Subsidiary Legislation 373.01.

Subject persons are encouraged to further consult Section 4.11 of the FIAU Implementing Procedures Part I, to regularly consult the SMB's web-page <https://foreignandeu.gov.mt/en/Government/SMB/Pages/SMB-Home.aspx> and to subscribe to the SMB's notifications service by sending an email to sanctions.mfea@gov.mt to receive the latest news and updates on United Nations, European Union and National Sanctions lists.

With particular reference to the sanctions imposed by the European Union against the Russian Federation due to the current situation in Ukraine, subject persons can refer to the SMB's dedicated web-page <https://foreignandeu.gov.mt/en/Government/SMB/Pages/Latest-News-on-Sanctions-imposed-under-the-Ukraine-Territorial-Integrity-Regime.aspx>.

In addition, the SMB has also issued a dedicated Guidance Note thereon which can be accessed through the following link:

<https://foreignandeu.gov.mt/en/Government/SMB/Documents/Guidance%20Notes/Guidance%20Note%20on%20the%20imposition%20of%20EU%20sanctions%20concerning%20restrictive%20measures%20in%20respect%20of%20actions%20undermining%20or%20threat.pdf>.

In case of any difficulties related to the obligations arising from the NIA, subject persons are directed to contact the SMB being the national authority responsible for the supervision of the implementation of sanctions and restrictive measures, and for enforcing obligations arising from the NIA.

AML/CFT Obligations and Sanctions

The imposition of sanctions and other restrictive measures can also have an impact on subject person's compliance with their AML/CFT obligations, including when carrying out Customer Due Diligence (CDD) measures. It is possible that information collected for the purpose of complying with AML/CFT obligations can also be of use in ensuring the correct application of sanctions and restrictive measures. The following are some key areas where additional attention should be exercised by subject persons:

- Risk Understanding and Assessment

The imposition of sanctions is one of the factors that needs to be considered when subject persons assess the risk of ML/FT associated with a given jurisdiction. In addition, the imposition of sanctions and restrictive measures also has a bearing on the risk of ML/FT arising from the customer or, where applicable, its beneficial owner/s. The imposition of any such measures should lead to a revision of one's overall risk assessment for given business relationships. It should also be a determining factor in assessing the risk associated with onboarding a prospective customer. Attention should also be paid to information obtained through adverse information screening which puts a prospective customer or beneficial owner in proximity of an individual who is subject to sanctions or restrictive measures.

- Beneficial Ownership

The imposition of sanctions and restrictive measures may lead to attempts by beneficial owners targeted by these sanctions or restrictive measures, (or who consider themselves likely to eventually be subject to similar sanctions or restrictive measures), to distance themselves from the entities or legal arrangements they own. Subject persons should pay more attention to whether any attempt to divest oneself of beneficial ownership is genuine or merely an attempt to conceal who is the actual beneficial owner, whilst the original beneficial owner retains control over the entity or arrangement through other means.

When onboarding new customers and conducting their screening for adverse information, subject persons should pay particular attention to information which may place the customer or the beneficial owner in proximity of a sanctioned individual or of one that is very likely to be sanctioned. Should any such recent and credible information surface, subject persons are to pay more attention as to whether the individual requesting the subject person's services or who is otherwise declared as the customer's beneficial owner is appearing on behalf of someone else.

- Transaction Monitoring and Reporting

When carrying out transaction monitoring and scrutiny, subject persons need to pay additional attention to possible activities and/or transactions pointing to a customer being in breach of sanctions. Particular attention should be paid to those customers who the subject person knows to have significant dealings with countries that are subject to sanctions or restrictive measures, or that otherwise have close contact with individuals who are subject to any such sanctions or restrictive measures.

Without prejudice to any reporting obligation to which the subject person may be subject to under the NIA or any other law, the breach of legally binding sanctions is a predicate offence. Any earnings related to this are therefore to be considered as proceeds of criminal activity. This would trigger the obligation to file a Suspicious Transaction Report under Regulation 15(3) of the PMLFTR. In this regard, subject persons are especially reminded of their obligations under Regulation 15(4) of the PMLFTR to refrain from carrying out any such transaction until an STR is filed with the FIAU and the time allowed to the FIAU to consider the said report lapses.

It is important to note that, with regards to the AML/CFT area, reference is not only being made to those sanctions and restrictive measures which are legally binding and enforceable in terms of the NIA, but also to those imposed by jurisdictions like the United Kingdom through the Office of Financial Sanctions Implementation ("OFSI"), the United States through the Office of Foreign Assets Control ("OFAC"), and other jurisdictions. Though these other sanctions and restrictive measures are not legally binding under Maltese law, they have a bearing on the application of AML/CFT measures by subject persons.

Conclusion

Subject persons are to bear in mind the importance of adhering to any applicable sanctions and of complying with the screening and freezing obligations emanating from the NIA, as well as with the AML/CFT obligations emanating from the Prevention of Money Laundering and Funding of Terrorism Regulations and the FIAU's Implementing Procedures.

Subject persons are reminded that they may submit any questions related to AML/CFT obligations on queries@fiaumalta.org. They may likewise submit any questions related to sanctions to the SMB on sanctions.mfea@gov.mt.

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Questions on this document or on the application of AML/CFT measures may be sent to queries@fiaumalta.org.

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