

EBAA Aviation Lawyers Committee

Workshop on the impact EU Sanctions against Russia and Belarus on BizAv 30th

June 2022, Paris-Le Bourget

Report

26/10/2022

1. Scope

This report has been written for the purpose of providing a general overview of the sanctions which are currently affecting Russia and Belarus.

More specifically, it focuses on how these sanctions are affecting aviation companies.

2. The Workshop

The workshop, held on the 30th of June 2022, focused on the impact that the EU sanctions imposed against Russia and Belarus had on aviation companies.

It was organized by the Aviation Lawyers Committee of the EBAA, held at the Paris Le Bourget Airport, in Dassault's conference room.

The workshop lasted from 09:45 till 15:30 and thus lasted five hours and 45 minutes. It focused on numerous aspects:

- Firstly, it dealt with the EU Sanctions on Russia and Belarus,
- Secondly, Global Jet, DC Aviation GmbH, CEBA, Netjets and AbsJets as operating companies, as well as SUCCESS410.COM as advisory company for the Baltic markets and the CEBA shared their outlooks with regards to these sanctions,
- Thirdly, a discussion took place over an action plan aimed at addressing any problematic issues through a contribution for a clarification and completion of the EU Commission's FAQ .

A visit to Dassault's FBO closed the day.

The participants:

Numerous legal professionals attended such an event. The attendees were the following:

Contact	Law Firm / Company	Country
Martina Flitsch	Weisenheimer Legal	Austria
Eva Stoklaskova	ABS Jets	Czech Republic
Amaël Chesneau	Chesneau Fischel	France
Nicolas Fischel	Chesneau Fischel	France
Matthieu de Varax	Odi-se Avocats	France
Thomas Boone	Odi-se Avocats	France
Brecke, Katja	Arnecke Sibeth Dabelstein	Germany
Kranich, Christine	Arnecke Sibeth Dabelstein	Germany
Adrian Jones	Martynfiddler	Isle of Man
Ivars Mekons	Success410	Latvia
Yann Hilpert	AKD Luxemburg	Luxemburg
Filippo Maria Arcaleni	DF Advocates	Malta
Richard Deschrijver	DF Advocates	Malta
Guido de Vos	AKD Luxemburg	Netherlands

Contact	Law Firm / Company	Country
Margarida Correia	Netjets	Portugal
Jadwiga Stryczynska	WKB	Poland
Michał Jaworski	jmklegal	Poland
Alex Chumillas	Tax Marine & Aviation	Spain
Philippe Renz	Renz & Partners	Switzerland
Charles Aguetant	CEBAA	France
Diego Magrini	AMAC Chair	UK
Bertrand d'Yvoire	EBAA France / Dassault	France
Bertrand Rager	Custax Legal	France
Lucie Cordier	Custax Legal	France
Helen Stone Ward	The Air Law Firm	UK
Pierre-Olivier Edouard	Harmony Jet	France/Malta
Bjorn Naberhuis	Global Jet	Switzerland
Svenja Wortmann	DC Aviation GmbH	Germany

3. The Current Situation

In 2022 several EU sanctions came into force after Ukraine was invaded.

On the 21st of February 2022, the travel bans and asset freezes towards holders of Russian

passports commenced.

On February 23rd, 2022, the first package of sanctions was launched.

On February 25th, 2022 the second package of sanctions emerged, which focused on the financial, energy (oil), transport, and technological sectors.

The third package of sanctions was launched successively on the 28th of February and on the 2nd of March 2022. It focused on a ban on transactions with the Russian Central Bank and joint action with the US, UK, and Canada to remove key Russian banks from SWIFT. This third package also introduced a ban on an overflight of EU airspace and on access to EU airports by Russian carriers. On the 9th of March 2022, a compliance package came into effect and provided an alignment of sanctions with Belarus.

The fourth package was then introduced on the 15th of March 2022. It chiefly introduced a full prohibition on transactions with key Russian state-owned companies.

The fifth package was then introduced on the 8th of April 2022 and included a ban on, inter alia, coal, Russian, and Belarusian freight road operators in the EU and on Russian-flagged vessels to EU ports.

On the 3rd of June 2022, a sixth sanctions package emerged. This package focused on, inter alia, oil import restrictions, oil transport services, and financial and business limitations.

On July 21st, the European Council adopted the Seventh package intended to tighten existing economic sanctions targeting Russia, perfect their implementation, and strengthen their effectiveness.

On the 6th of October, the eighth package¹⁶ has been implemented to add restrictions on items that may contribute to Russia's military and technological enhancement and trade and services with Russia.

Russia is currently also subject to **aviation sanctions**. In effect, as of February 2022, in the application of Council Regulation EU 2022/334, every Russian carrier was prohibited from overflying the EU and not permitted access to EU airports. Moreover, aircraft which have been registered in Russia or elsewhere and which are chartered, possessed, or operated by any Russian legal or natural person cannot land at any EU airports and cannot fly over EU countries. The prohibition also includes private aircraft. Additionally, the exportation of goods in the aviation and space industry to Russia is also prohibited. Moreover, there is also an additional prohibition on the furnishing of maintenance and insurance services and technical assistance related to such goods and technology. Thus, due to this, Russian airlines are not able to purchase any aircraft, spare parts, or equipment for their fleet and cannot execute the required repairs or technical examinations.

Thus, at present, there is a deficiency of guidance with respect to sanctions relating to aviation. The FAQ on aviation-related matters concerning sanctions adopted following Russia's military aggression against Ukraine issued by the Directorate-General for Financial Stability, Financial Services, and Capital Markets Union on 27 July 2022 which was not updated since then, is not sufficient. This creates legal uncertainty and generates variations in the interpretation of texts by authorities, including between state agencies within the same member state.

4. The Impact of EU Sanctions in Aviation

i) Performance of Flights (owner and external charter flights)

In terms of article 4e of the Council Decision (CFSP) 2022/335 amending Decision 2014/512/CFSP ".... the Member States shall, in accordance with their national rules and laws and consistent with international law, in particular relevant international civil aviation agreements, **deny** to any aircraft operated by Russian air carriers, including as a marketing carrier in code-sharing or blocked-space arrangements, to any Russian-registered aircraft, and to any non-Russian registered aircraft which is owned or chartered, **or otherwise controlled** by any Russian natural or legal person, entity or body, permission to land in, take off from, or overfly the territory of the Union."

The EBAA also requested and received clarification from the Commission with regard to the meaning of "Russian persons". In effect, the latter is defined as ".... **any person with Russian nationality, regardless of whether that person also possesses another nationality, citizenship or a permanent residency in the EU.**"²⁰

Thus, a Russian passport is instrumental in identifying whether an individual would be considered to be a "Russian person" and therefore subject to EU sanctions.

Hence, aviation companies have additional burdens. For instance, if the aircraft is possessed or chartered by a Russian person, even if such person is not on the sanctions list or, does not reside in Russia or, is in possession of both an EU and Russian passport, no flight can occur from/to/over EU territory.

The idea of having a "blanket law" that identifies a certain type of person, on the basis of the latter's nationality, as the main target, has a clear discriminatory nature that cannot find protection on a European or National level.

If this approach is not removed, we think that a consistent number of court cases will be launched by Russian citizens living in Europe and the Courts will certainly rule in their favor, with the risk of probably condemning the companies to pay damages or compensation. Such an action could lead to the company's bankruptcy.

Furthermore, it is also important to note that all the operators in the industry are not in favor of enforcing this law. Although they are coerced to respect such sanctions, they are apprehensive of the fact that the sanctions are highly discriminatory towards individuals holding a Russian passport.

Moreover, operators and maintenance companies are not willing and do not have the knowledge or capabilities to act as police.

Additionally, the point relating to the "control of the aircraft", in the issued legislation is creating even more room for disarray. It is evident that the various national authorities are interpreting this point differently.

What must be explicit is that in aviation the only person in "control" of the Aircraft is the pilot. The passenger cannot in any way interfere with or give orders to the pilot. Moreover, the Charter of the flight cannot control the aircraft and the flight is purchased with a route plan which is clearly planned out. This specific issue was raised several times by the EBAA and the European Commission stated their definition of control was: "The term "controls" goes well beyond who is the AOC holder and does not relate to the ownership and operational control rules or Air Operations rules in this case. For example, if an aircraft is chartered by an individual, then that individual has

the say over when and where it flies, while the operator will have control over operational matters (e.g. fuel planning, mass & balance, selection of alternates, etc). Hence the person chartering the aircraft is in control over the flight and the AOC holder merely delivers that service.” This is in clear contrast with the rules and standards of the industry and the related legislation.

ii) Performance of Maintenance

According to the clarification that the EBAA received from the European Commission, “any natural or legal person, entity or body in Russia” should be comprehended as covering any natural person who is a resident of Russia and any legal person, entity or body established in Russia, independently of their citizenship/ownership. Notwithstanding this, the expression does not cover Russian citizens or Russian-owned companies which are not resident in Russia/established in Russia. Thus, in theory, maintenance or repairs can be carried out on aircraft which are possessed by persons inhabiting Russia, even if such persons have Russian citizenship. In actuality, a lot of MRO companies have decided **not to service Aircraft owned by Russians who are not residents of Russia.**

Moreover, a crucial principle for establishing whether maintenance or technical services can be supplied is whether the person resides outside of Russia. Thus, maintenance companies are demanding the submission of exhaustive forms focusing on due diligence ascertaining the aircraft’s status, its Beneficial Owner, and the place of residency of the Beneficial Owner.

It is also important to note that both US and EU sanctions must be respected by all maintenance service providers.

Moreover, the US regulations do not authorize the supply of any components deriving from the USA, including technology or software, to any aircraft situated or operated, or registered in Belarus or Russia and/or leased, chartered, or controlled by Belarus, Russia or any Belarusian or Russian person, body or entity.

A practical scenario would be the following: Aircraft owned by Russians, not resident in Russia, are left without spare parts and are also not serviced. Thus, for this reason, the aircraft is completely not usable. The MRO is not even allowed to put them in airworthy condition. This will undoubtedly generate significant fees for the parking of the AC and the latter loses its value.

This will open a new scenario on prospective court cases and legal actions that can be rightly opened by individuals, damaged and discriminated against on the basis of their Russian ethnicity, directly or indirectly by measures (seizing of the AC or deny of maintenance) that are not based on court decisions nor on concrete facts. Ethnicity cannot be used to discriminate and target by special measures. Europe and its rule of law cannot allow this.

5. Cases

The main question is: does the EU understand what is happening as a consequence of these sanctions?

During the workshop, some AOC companies described practical cases related to the sanctions.

One of the companies which were mostly affected by the sanctions was Global Jet. Global Jet was forced, due to these measures, to abruptly interrupt relationships with longstanding clients (not sanctioned but with Russian Passport), some of whom had been clients of the Company for the last fifteen years.

Moreover, more than fifty employees were laid off which created economical difficulties for their families purely because such employees were related to Russian Aircraft (Non-Sanctioned Russian individuals). Thus, human capital is being lost and employees are losing their salaries for frivolous purposes.

GLOBAL JET – Contributed by Bjorn Naberhuis, Vice President of Business Development

One of the cases dealt with a long-term local client who had requested a short flight from Zurich to Vienna in March 2022 and who was in possession of dual citizenship as he is both Maltese and Russian. The EBAA was contacted to clarify certain points with regard to this flight. It was concluded that the client's EU passport would not be adequate, and the Russian passport would not permit the passenger to request a charter flight because this would have been classified as a controlled flight on the 30th of March 2022. Moreover, there was no attempt from Global Jet to try and reach a solution. Following this, the clients were informed about the imposed sanctions and the client was still able to make use of the required services (with other operators that did not follow the rule).

A second case dealt with an NCC private aircraft with a Russian minor on board. The minor was invited on board as a friend. However, provided that she was Russian, three companies refused to handle the flight. Moreover, the aircraft is an NCC fully private European aircraft and does not and did not have any links with Ukraine or Russia. The passengers departed from Spain and were desirous of arriving in Switzerland. However, the Handlers in Switzerland had no intention of managing the flight. One of Global Jet's representatives had a meeting with the general managers' agent during which Jet Aviation merely stated that the sole thing that it could do was render aid. In effect, the sole handler that ultimately furnished assistance with the handling of the jet was Private Port. Therefore, Global Jet has continued to use Private Ports since this case.

Additionally, Global Jet is also preoccupied with the new procedure required for charters.

Normally, a charter request usually specifies the pax number, but the request excludes the name, as the latter is usually not communicated or is solely communicated at the last stages of the booking.

Due to the current sanctions however, Global Jet is required to enquire about the nationality of its clients too and this creates an additional burden for the Company since it does not want to discriminate against its own clients.

Additionally, clients, due to this "witch hunt" against Russians, do not always act bona fide. Therefore, sometimes the Company obtains inaccurate information. Due to this, it can be stated that the Company is exhibiting prejudicial behavior towards its clients. As a result, due to such sanctions and restrictions, many clients are leaving Global Jet and opting to join

operators that are not influenced by the decisions taken at the EU level.

DC AVIATION – Contributed by Svenja Wortmann, Vice President of Project & Contract Management

Stuttgart-based companies, covering business all across Europe, has also been affected by these Sanctions.

Similar to the situation that is burdening the other AOC operators, there is a lack of clarity and conflict with regard to the promulgated rules. Additionally, the interpretation of the Sanctions is being left in the hands of individuals who are not accountable. However, notwithstanding this, they are the ones who oversee the final decision. Undoubtedly, this is creating many unwarranted difficulties for the company. Moreover, the Company has also underlined the discriminatory nature of the Sanctions for non-sanctioned Russians who are requesting a flight or maintenance of their Aircraft.

A PowerPoint presentation by DC Aviation is attached.

Net Jets – Contributed by Margarida Correia, General Counsel

NETJETS's experience in Europe is the same as the previous operators and NETJETS shares the same concerns referred to above. Besides the freeze/termination of all Russian accounts, the additional burden of inquiring about dual nationality to all passengers is very time-consuming.

NETJETS runs a fractional ownership program. NETJETS received confirmation from the EU Commission (DG Move), through EBAA that an aircraft with a fractional owned by a Russian would not be grounded subject to that fractional ownership not exceeding 50%. A more formal clarification on this would be of the utmost importance.

The discriminatory and competition-distorting behavior of the European Union between regular air carriers and business aviation is very concerning. The impact of the financial sanctions on regular air carriers is only felt by sanction-listed Russian and Belarussian individuals, where commercial business aviation has suffered a substantial impact, regardless of the fact that business aviation air carriers never lose control of the flight to any passenger (Russian or no Russian).

ABS Jets – Contributed by Eva Stoklaskova, legal advisor

ABS Jets - the Czech company based in Prague and in Bratislava (the Slovak Rep.) is an AOC operator providing aircraft maintenance as well.

ABS Jets was most affected by the sanctions in the MRO area, where it lost this year more than 40% of scheduled orders from long-term non-sanctioned Russian customers.

But due to a lack of clarity on these sanctions, all Russian orders were rather refused out of caution. This has got a significant impact on turnover and could have a negative effect on possible personnel consequences leading to reducing of employees. The company is trying

to find new orders, but even EU MRO competitors often offer their services below the cost price.

Due to a lack of clarity of sanctions, it was not allowed to provide any services on the grounding of the aircraft. Regardless of the significant parking fees, this means that the aircraft loses its value and in particular EU lessors/financing banks may be affected as a result.

CEBAA – Contributed by Charles Agueffant, Chair of CEBAA

Since the beginning of the war, the operating costs went drastically up (spare parts, fuel, etc).

Russia's overflights ban significantly lengthens travel times. Two examples of recent passenger transfers:

- Tajikistan - Germany / +20%.
- Italy - Korea / +40%.

If we have to evacuate a patient from Belarus or Russia, we will face sanctions:

- American sanctions – from the Bureau of Industry and Security (BIS) in the U.S. – which does not provide for a “medevac” exemption, and which prohibits flights to Belarus and Russia for aircraft with more than 25% of American spares. Nevertheless, they have confirmed to us that there could be some derogations, especially for European or American patients.
- French NOTAM prohibiting operations there. A special authorization from MEAE (French Ministry of Foreign Affairs) would be required to derogate from it.
- In addition, in France, we are also evacuating patients through Ukraine from the Polish airports close to the border (EPRZ for example).

BALTIC COUNTRIES (Estonia, Latvia, Lithuania) - Contributed by SUCCESS410.COM, Specialized Advisory Services (presented by Ivars Mekons, Managing Partner)

Ivars Mekons explained that historically, after regaining the independence in the early 90ies, the Baltic countries were forming into an 'East-West hub' for the former USSR affluent clientele in the business aviation sector. This was re-entrenched after the Baltic countries joined the EU in the early 2000s.

It can be estimated now as approximately 30% drop in flights for the Baltic-based business airlines.

While being small countries, a crucial difference exhibits in the approach adopted by the aviation authorities on what constitutes a 'control' regarding charter flights (Art. 3d(1), Regulation 833/2014). One authority will approve an instance when a Russian national will be simply a passenger on board a business airliner, while the charterer being a 'clean' EU national (no dual passport holding with respect to Russia), while another would disprove this on allegations that there lacks any sensible explanation why a Russian is only a passenger and a 'clean' EU national acts as a charterer with no easily identifiable strong bonds warranting such an 'act of goodwill' on part of the European citizen.

There is no logic in banning a Russian national from boarding a business aircraft, while the

same person is perfectly allowed, under the current sanctions regime in force, to hire yachts or luxury vehicles for purposes of moving around the EU.

Another factor is that more business aircraft owners consider remarketing and placing their aircraft into more friendly regions, in particular, in Middle Eastern countries and Turkey. One should mention that one client has already done so, and another one earnestly considers undertaking the process.

Next, there exist situations when banks are withholding payments for otherwise standard or routine aircraft-related transactions, such as payment for maintenance and repair services, brokerage services, and the like, out of concern that the sanctions may have been breached.

In terms of potential solutions, one could propose that the latest available official guidance from the EU Commission concerning aviation issues (dated June 2, 2022) is supplemented with a clear emphasis that a Russian national is permitted to board in the capacity of a passenger on business airliners, where the charterer is another, permissible, natural or legal person.

This would safely comport to the general scheme behind the intent of the concept of 'control' under Regulation 833/2014. As for the banking institution safeguard activities in respect of concerns of sanctions avoidance or circumvention (suspending payments pending inquiries), that would be, predominantly, a matter of coordination work emanating from the national aviation authorities to explain what transactions are normally undertaken by business airlines in the market to ensure either the safety or commercial viability of the company's fleet aircraft.

As an additional incentive to consider - sees that it's time to reassess the introduction of amendments to the Regulation 833/2014, since it's transpired that the situation is about to stay for a significant time, and every industry will most likely evaluate the actual (disproportionate) impact on the European players.

The amendments could provide that Russian nationals not being subject to individual sanctions, are exempted from Art 3d(1) in Regulation, with respect to non-Russian aircraft

(this would correlate with an unhindered opportunity to charter yachts or rent luxury vehicles in EU by these nationals). Finally, a broader role should be played by EASA (as a voice for the industry), since DG MOVE will significantly be impacted by the opinions or suggestions advanced by the powerful body of EASA.

AMAC – Contributed by Diego Magrini, Chair of the AMAC

Having discussed prior to this meeting the matter of Sanctions with other AMAC Committees' Chairs and Vice Chairs, it is apparent that in all specialties of the industry, these are felt as a big risk to conducting business nowadays.

In particular, most raised doubts come from colleagues involved in the Operational, Financial, and Risk sides of the business.

EBAA should promote a common interpretation of the rules at a European level as well as national level, to allow European operators to conduct business on a level-plain field.

Following the conversation of today the main issue seems to be the restriction of non-

sanctioned "Russian persons" from engaging in economic activity with one branch of the industry (i.e. Business Aviation), while a similar activity is allowed with a different branch of the same industry (i.e. Airlines).

The debatable point is whether chartering to the final user (i.e. not for seat resale) should be compared to owning or controlling an aircraft (reference the text "[...] non-Russian registered aircraft which is owned or chartered, or otherwise controlled by any Russian natural or legal person, entity or body [...]").

While ownership is generally well-defined and understood, the condition of "control" is not as clear. A well-utilized concept in aviation is that of "Operational Control", which in Part-CAT regulation is specified to fall on the AOC holder, not the passengers or the charterer.

For these reasons, EBAA should strive to re-level the playing field with airlines by recommending that the chartering of an aircraft to the final user (i.e. not for seat resale), is not to be compared to ownership or control of the same, but purely to the purchase of the entire seating capacity of an aircraft.

Finally, EBAA should warn its members about implications arising from sanctions imposed by third countries. One such case is the United States of America, which has introduced export control rules that may apply to any aircraft of any nationality landing in the territory of the Russian Federation or Belarus.

All the parties have underlined the lack of coordination between EASA and DG Move. (this is the main bottleneck: clarification to member states and their authorities. The work EASA started but that was stopped by the EC should be reinstated)

6. Conclusion

Therefore the EU sanctions relating to the operation of flights for persons who reside in Europe and outside of Russia must be urgently clarified.

The interpretation and the application of the regulations by the different Members States lack consistency. The FAQ of the EU Commission does not sufficiently address the problems faced by the operators, this FAQ needs to be completed.

Moreover, amendments should also be made so that if the sanctions list does not indicate the names of certain individuals, the latter should still be able to use their respective aircraft. This should also be inclusive of third-party flights. Furthermore, there should also be recognition of the fact that operators would have already concluded their contracts with their clients. Thus, these contracts should be respected.

Due to the above-mentioned arguments, we urge the European Commission to take immediate action. Moreover, any further measures that the EU plans to take should not be discriminatory.