

Russia 2022 and the humanitarian exemption

*Dr Alexander Ressos, TEP
Attorney-at-Law (Switzerland), Solicitor (Hong Kong),
Solicitor (England & Wales)*

Medicines, medical devices and agricultural products occupy a special position in almost every sanctions regime. The European Union, the United States and Switzerland have generally excluded these goods from trade restrictions, since the population of a sanctioned country should not be deprived of essential care. The exemptions are usually designed as general exceptions or as general licences. They do not, however, release companies from the prohibition of making funds or economic resources available to listed persons. A pharmaceutical company that supplies a Russian distributor must therefore check whether the distributor, its owners or its bank are subject to sanctions.¹

After February 2022 the large Basel groups announced that they would continue to supply essential medicines to Russia while suspending other activities. According to their public statements, they stopped new clinical trials in Russia, ended advertising and other promotional activities and reduced investments. These decisions went beyond the legal requirements and reflected reputational considerations as well as the difficulty of conducting business in a country whose payment systems were partially cut off from the West. They also illustrated a dilemma familiar to the industry: the humanitarian duty to patients who depend on certain therapies sits uneasily with the political expectation that companies should withdraw from an aggressor state.²

The legal work in this area concerns above all three questions. The first is the classification of goods, because only goods that are actually covered by the humanitarian exemption may be supplied. Laboratory equipment, certain chemicals and devices that also have industrial uses may fall under the export prohibitions even when they are destined for a hospital. The second question concerns the screening of counterparties, including the indirect ownership and control of companies by listed persons. The third concerns payments, because banks have become more cautious and often

refuse transactions with sanctioned countries even when they would be lawful. Basel's position as a centre of both the life sciences and international finance means that these questions are discussed at close quarters by industry, banks and lawyers.³

1 Notes

1. On humanitarian exemptions in the EU sanctions against Russia, see Council Regulation (EU) No 833/2014 as amended, and the corresponding provisions of the Swiss Ukraine Ordinance; on United Nations Security Council Resolution 2664 (2022) and its standing humanitarian carve-out for UN asset freezes, see the UN documentation. To be verified. ↩
2. See the public statements of Novartis and Roche on their activities in Russia from March 2022 onwards and the respective annual reports for 2022. Status to be verified. ↩
3. On the concept of ownership and control of entities by listed persons under EU and Swiss sanctions law, see the European Commission's Frequently Asked Questions on the Russia sanctions and SECO's corresponding FAQ. To be verified. ↩

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