

EU Restrictions on Use of Russian Controlled Aircraft

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The European Union (EU) has promulgated two restrictive measures on the use of Russian registered, or Russian-owned or controlled aircraft in view of Russia's actions in Ukraine.

EU Council Regulation 2022/328, dated February 25, 2022, provides, in Section 3c (1) – (5), which come into effect as of March 28:

1. It shall be prohibited to sell, supply, transfer or export, directly or indirectly, goods and technology suited for use in aviation or the space industry, as listed in Annex XI, whether or not originating in the Union, to any natural or legal person, entity or body in Russia or for use in Russia.

2. It shall be prohibited to provide insurance and reinsurance, directly or indirectly, in relation to goods and technology listed in Annex XI to any person, entity or body in Russia or for use in Russia.

3. It shall be prohibited to provide any one or any combination of the following activities: overhaul, repair, inspection, replacement, modification or defect rectification of an aircraft or component, with the exception of pre-flight inspection, in relation to the goods and technology listed in Annex XI, directly or indirectly, to any natural or legal person, entity or body in Russia or for use in Russia.

4. It shall be prohibited to:

(a) provide technical assistance, brokering services or other services related to the goods and technology referred to in paragraph 1 and to the provision, manufacture, maintenance and use of those goods and technology, directly or indirectly to any natural or legal person, entity or body in Russia or for use in Russia.

(b) provide financing or financial assistance related to the goods and technology referred to in paragraph 1 for any sale, supply, transfer or export of those goods

and technology, or for the provision of related technical assistance, brokering services or other services, directly or indirectly to any natural or legal person, entity or body in Russia or for use in Russia.

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5. With regard to the goods listed in Annex XI, the prohibitions in paragraphs 1 and 4 shall not apply to the execution until 28 March 2022 of contracts concluded before 26 February 2022, or ancillary contracts necessary for the execution of such contracts.’;

Council Regulation EU 2022/334, dated February 28, 2022, provides that:

It shall be prohibited for any aircraft operated by Russian air carriers, including as a marketing carrier in code- sharing or blocked-space arrangements, or for any Russian registered aircraft, or for any non-Russian-registered aircraft which is owned or chartered, or otherwise controlled by any Russian natural or legal person, entity or body, to land in, take off from or overfly the territory of the Union.

The United States has not (yet) adopted comparable restrictions on the use of U.S. N-registered aircraft that apply so broadly to any Russian natural or legal person. Instead, the U.S. sanctions regime is limited to specifically named individuals and companies. Accordingly, at this time, it is possible to re-register Russian owned or controlled aircraft as U.S. N-registered aircraft and for such aircraft to fly to and from the United States.

In such case, title to the aircraft would be held by a U.S. trust company, pursuant to a trust agreement with the existing owners of the aircraft. An operating agreement would be made with an operator that is not subject to the EU restrictions. Future operation of the aircraft by the new operator would not be subject to the above EU Regulations.

There are some U.S. restrictions on the operation of aircraft, particularly U.S. Notice To Air Missions (NOTAM) A0005/22 which provides that, as of February 28, 2022, U.S. N-registered aircraft may be operated, bypassing European Union airspace, from airports in the U.S. to airports in Russia. For example, a flight may be operated from a U.S. airport to an airport in Istanbul, Tbilisi or Baku, and from there to airports in Russia that are not within 160 nautical miles of Ukraine or Belarus.

As for how the current situation will develop and affect the market for business aviation and business aircraft, the market for business aviation flights is closed in the direction of the European Union, and will likely stay closed for an extended period of time.

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Some brokers of aircraft are anticipating that many Russian owned and controlled aircraft will be put up for sale because they may not be used in Europe and may not be maintained properly and the terms of their financing and expanded sanctions regime may require their sale.

The appearance on the market of some number more expensive, long-range aircraft will result in downward pressure on the value and price of some models of business aircraft. This may be the time for owners to take immediate measures to prepare for a sale of their aircraft before the corrects downward. Russians may own enough aircraft to “move the market” for business aircraft. For those considering such a step, re-registration and physical relocation of aircraft prior to March 28 to the U.S. may be a correct decision.

For those who may anticipate a decision to sell their aircraft in coming months or the next year or two, it may be advisable to take action immediately - prior to March 28 to register their aircraft outside of a European Union. In the European Union, it will soon be forbidden for brokers and inspection and repair facilities to provide services. A decision to move aircraft to the U.S., the largest market in the world for business aircraft, may be advisable, now while the door is still open.