

Corporate Aviation: Impact of Sanctions in Response to Russia's Invasion of Ukraine

March 4, 2022

In the wake of Russia's military invasion of Ukraine, several countries, starting with the 27 member states of the European Union and followed by the United States, Canada, Switzerland and Norway, have implemented restrictions prohibiting commercial and private Russian aircraft from operating in their airspace.

On February 28, the European Council adopted **Council Regulation (EU) 2022/334** (the "Regulation"), closing off the EU airspace to any aircraft operated by Russian air carriers, including as a marketing carrier, and to any Russian registered aircraft or non-Russian registered aircraft which are owned, chartered or otherwise controlled by a Russian legal or natural person. The Regulation provides an exemption for emergency overflights and landings, and licensing for humanitarian purposes.

Additionally, the EU has imposed prohibitions on the sale, supply, transfer or export of aircraft and aircraft parts and technology to Russia or to Russian persons and entities, including certain related services and financing under Council Regulation (EU) 2022/328. An exception exists for contracts concluded before February 26, 2022.

On March 1, 2022, President Biden followed suit by announcing during the State of the Union address that the U.S. would join its allies and close off its airspace to all Russian flights. According to the FAA's **Notice to Air Missions (NOTAM)**, any plane owned, certified, operated, registered, chartered, leased or controlled by, for, or for the benefit of a person who is a citizen of Russia will be prohibited from operating in U.S. airspace, effective March 2, 2022. Other countries, including the UK, Norway, Switzerland and Canada, have implemented similar restrictions.

In a retaliatory move, on February 28, 2022, Russia announced its own prohibitions on the use of Russian airspace, affecting aircraft from 36 countries, including the EU states, the UK, and the United States. No indications were made as to when the bans would be lifted by either the Western countries or Russia.

Corporate aircraft operators and managers, pilots, charter operators and other stakeholders in the corporate aviation world will need to undertake a thorough review of their client base to ensure compliance with restrictions. The concepts of "control" are not defined in the sanctions but it is fair to expect that the broadest definitions will be applied.

In addition to these sanctions, aircraft operators will likely need to be prepared to respond to subpoenas from a number of U.S. and international **task force initiatives** searching for assets of Russian individuals and corporate bodies subject to other global sanctions that may be subject to seizure.

Violation of the restrictions and sanctions may result in a variety of civil and potentially criminal penalties.

These developments reinforce the need to adopt and maintain solid due diligence and know your customer processes in order to identify the customers of aircraft operators and charter companies.

Fractional membership and on-demand programs which flourished in the last decade will have to quickly develop mechanisms to identify their customers, who often are dual nationals. Charter brokers, as the first point of contact with the customer, will likely be required to undertake additional due diligence on behalf of charter providers. These enhanced due diligence requirements may require review to ensure compliance with various privacy regulations,

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including the EU General Data Protection Regulation (GDPR), which regulate transfer of identifying data, including copies of passports, between different entities.

Operators of U.S.-registered aircraft cannot assume that the FAA would conduct an independent investigation of aircraft ownership as the FAA effectively outsourced that process to the few U.S. trust entities which organize owner trusts for foreign owners. These arrangements came under significant scrutiny following 9/11. **In a damning report**, the Department of Transportation Office of Inspector General concluded that 5,600 aircraft registered in the U.S. through trusts for the benefit of non-U.S. citizens "lacked key information such as the identity of trustors and beneficiaries." Although U.S. trust providers have significantly improved their processes since the audit, or even exited this business, we expect a significant level of scrutiny and added AML/KYC requirements.

If you have further questions or require advice on this issue, please contact your Miller Canfield attorney or any of the authors listed on this alert. For a comprehensive review of those U.S. export controls and sanctions recently imposed on Russia, Belarus and specific areas of Ukraine *in response to the Russian invasion of Ukraine*, please see *U.S. Export Controls and Sanctions Update: Russia, Belarus and Ukraine: Law Firm of Miller Canfield*.