

**Wolf Theiss**

# WT

## Trade and M&A challenges

The impact of the conflict on trade and M&A transactions

Business Breakfast

11 May 2022

Bruno Stefanik



Deutsch-Slowakische  
Industrie- und Handelskammer  
Slovensko-nemecká  
obchodná a priemyselná komora

# Wolf Theiss

# M&A – current challenges

## **Sanctions Due Diligence in M&A**

- freezing of assets – sale side impediment
- prohibition to make payments to sanctioned entities – buy side impediment

## **Delaying or Derailing of M&A in the CEE region**

- Russia and Ukraine are affected for obvious reasons
- CEE is affected by extension
- Suspension of pending transactions and delaying of existing transactions
- This extends to the financial sector (debt financing)

## **M&A Deals with sanctioned Russian parties are limited**

- Non-sanctioned M&A continues
- M&A Activity in Q1 2022 smaller than in 2021, but on / above 5-year average
- Investor hesitation is market and geography driven
- The winners are cybersecurity, semiconductors, specialty chemicals [automotive, construction]
- The losers are energy producers (fire sales)

# M&A – trends

## Sanctions Due Diligence and R&W

- Compliance with sanctions DD and R&W used to be standard more in US deals
- Increasing demand for sanctions-related R&W
- Absence of Sanctions compliance / gaps in compliance will become major DD finding
- Sanctions W&I Insurance? Probably not – key compliance issue such as bribery&corruption and environmental are typically excluded
- Drive sanctions compliance in international business

## FDI screening

- Current framework: Lex Enel
- In reality, used to block the sale of SSE Holding to MVE
- Current framework very narrow: energy and limited industries
- New framework in preparation
- **Likely outcome:**
- Broader scope
- More difficult to exclude ex-ante
- Will result in more filings out of caution
- Likely starting 1 January 2023

# Trade – challenges 1 of 2

## Sanctions Due Diligence

- Increased costs of compliance
- Policing difficult
- Companies seek to prevent supply to Russian customers down the supply chain
- Remedies?
- Termination of contract
- Damages?
- Contractual penalty? -> court right of moderation -> damages?

## Energy sector – operational risks

- Some energy suppliers are using aggressive tactics to get out of fixed energy supply contracts
- This is affecting client operations – costs of power grow from EUR 100/MWh to EUR 200/MWh
- The tactics are legally questionable but there is a gap in protecting SMEs / non-household customers
- Protection now extended to some customers – consumption 30 MWh (electricity) / 100 Mwh (gas), social services operators, operators of communal home heating – however not most types of businesses
- Some customers choose to pay and later challenge the payments
- However, it is difficult arguing duress in Slovak law governed commercial contracts
- In addition, the concept of “surprising changes to GTCs” is not very well developed under Slovak law – but there are signs
- Litigation: Barriers to entry (cost); long term return uncertain
- Clients would like to consider injunctive relief, but the from an operational perspective, it is unrealistic
- Clients in energy-heavy industries are introducing fixed or floating energy price components to their product

## Trade – challenges 2 of 2

### Energy Sector – insolvency risk

- Pre-covid as well pre-war energy trading characteristically included aggressive shorting, betting on the decrease of the price OR simple failure to secure fixed price for commitments
- Steep increase of the price resulted in actual or imminent bankruptcies: Slovakia Energy
- In some cases, the suppliers try to avoid liability through evading insolvency: forum shopping, asset divestment
- Increased cost of due diligence, increased cost of asset location
- Sunk costs in enforcement
  
- More credit risk aversion
- Credit insurance
- Securing liabilities

# WT

## Employment law challenges

Impact of the conflict on employment-law relations

Employers' response and forms of support for employees from Ukraine

Business Breakfast

11 May 2022

Zuzana Hodonova

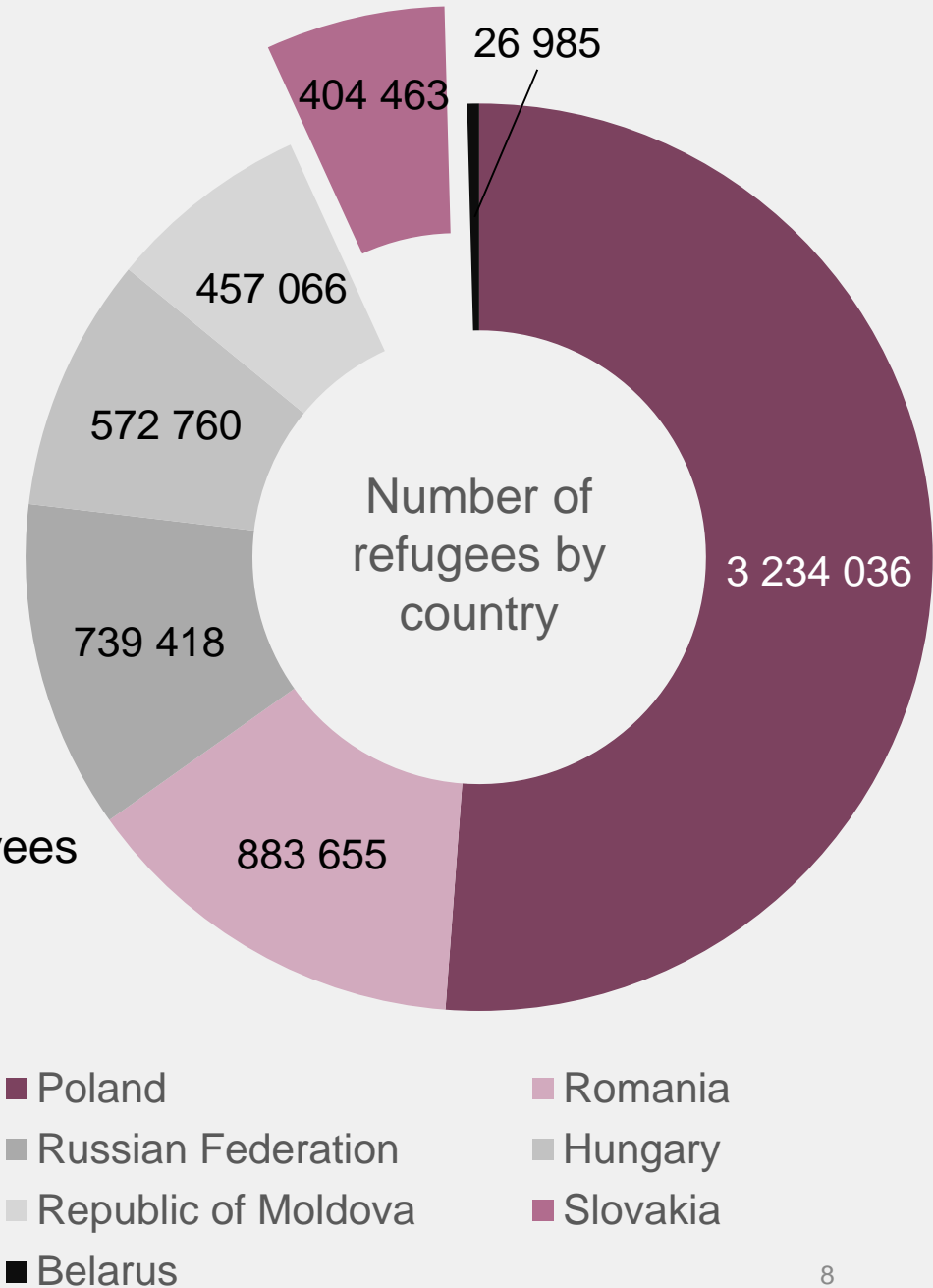


Deutsch-Slowakische  
Industrie- und Handelskammer  
Slovensko-nemecká  
obchodná a priemyselná komora

# Wolf Theiss


# Ukraine crisis in numbers

- High refugee influx from Ukraine to neighboring countries
  - more than 400 thousand refugees fled to Slovakia (as of 9 May 2022)
- Slovakia activated temporary refuge as of 1 March 2022
- EU activated temporary protection as of 4 March 2022
- Employers pro-actively approached the protection of their employees





## Response of the business world, including law firms operating in Russia



Nearly **1,000** companies have so far announced reduction in their activities in Russia

Microsoft, Apple and Dell have suspended product sales in Russia

Goldman Sachs, Credit Suisse, Deutsche Bank, JP Morgan Chase and other banks wind down businesses in Russia

**26** international law firms announced they were closing their Russian offices

# Temporary Refuge 1 - The Fastest Way of Protection

More than 73,000 applications for temporary refuge were filed until 6 May  
Only around 200 applications for asylum were filed

## Eligible applicants

- Ukrainian citizens and their family members
- Aliens enjoying international or national protection in Ukraine and their family members
- Aliens with permanent residence in Ukraine

## Benefits of temporary refuge

- Refugee
  - obtains tolerated residence in Slovakia until 4 March 2023
  - can travel out of Slovakia
  - can get employment in Slovakia immediately without work permit
  - receives support in finding accommodation
  - becomes eligible to provision of urgent and necessary health care

## Temporary Refuge 2 - Health Care

### Persons in transit

- Entitlement to only to urgent health care during the first 30 days after entering Slovakia

### Employment

- Full scale health care is provided for employees employed on the basis of temporary refuge
- Such person becomes mandatorily covered by health insurance
- Employees' dependent children are also entitled to health insurance.

### Temporary refuge

- Persons granted temporary refuge do not enter the public health care system
- They have the right to reimbursement of urgent and necessary health care

## Temporary Refuge 3 - Employing Refugees from Ukraine

### Legal basis

- Granted temporary refuge
- No work permit required
- No confirmation of the possibility of filling a vacancy required

### Employer's obligations

- Notification of the competent Labour Office within 7 working days as of commencement of work

### Relaxation of conditions

- Declaration of integrity (instead of criminal records extract) sufficient for:
- Teachers/educators and professional employees
- Temporary and occasional pursuit of the medical profession
- Performance of work in public interest

## Best practices of employers



Relocation of employees – within the country / outside of the country



Providing financial assistance



Support with transportation, accommodation, language training, mitigating any tensions at workplace



Continued recruitment in Ukraine

# Potential issues / challenges

## **Employment contract**

- fixed-term
- permanent

## **Employment of qualified workforce**

- requirement for verification of qualification

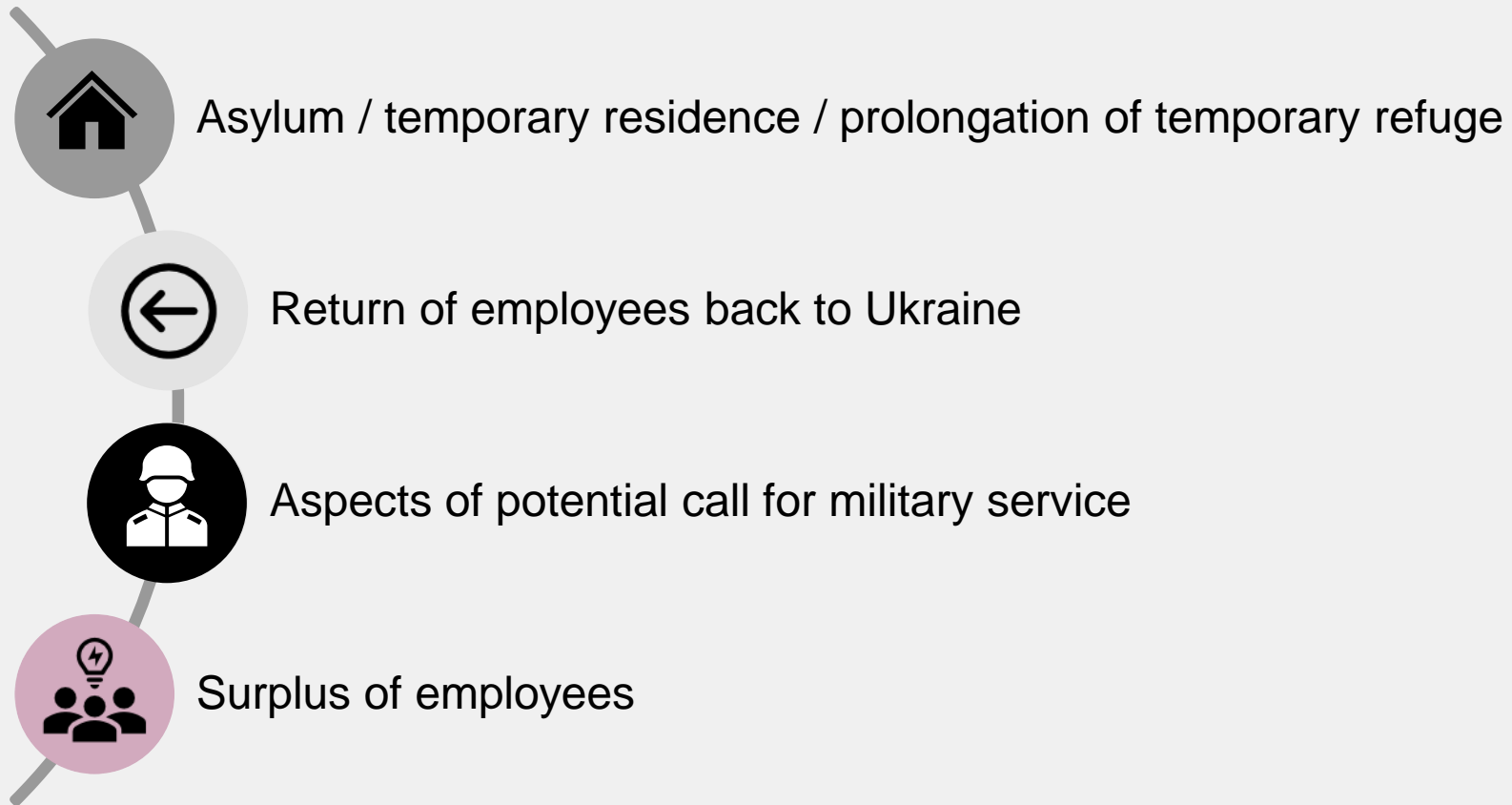
## **Employment in regulated professions**

- requirement for verification of qualification
- declarations of integrity (extracts from criminal register to be submitted in 6 months)
- professional / language exams (e.g. in the case of physicians)

## **Self-employed persons / entrepreneurs (e.g. independent IT contractors)**

- required extracts from criminal register
- verification of qualification - required for crafts and qualified trades
- temporary residence required

## What next?



# WT

## Corporate finance challenges

Sanctions and their impact on corporate finance transactions

Business Breakfast

11 May 2022

Rudolf Pfeffer



Deutsch-Slowakische  
Industrie- und Handelskammer  
Slovensko-nemecká  
obchodná a priemyselná komora

# Wolf Theiss



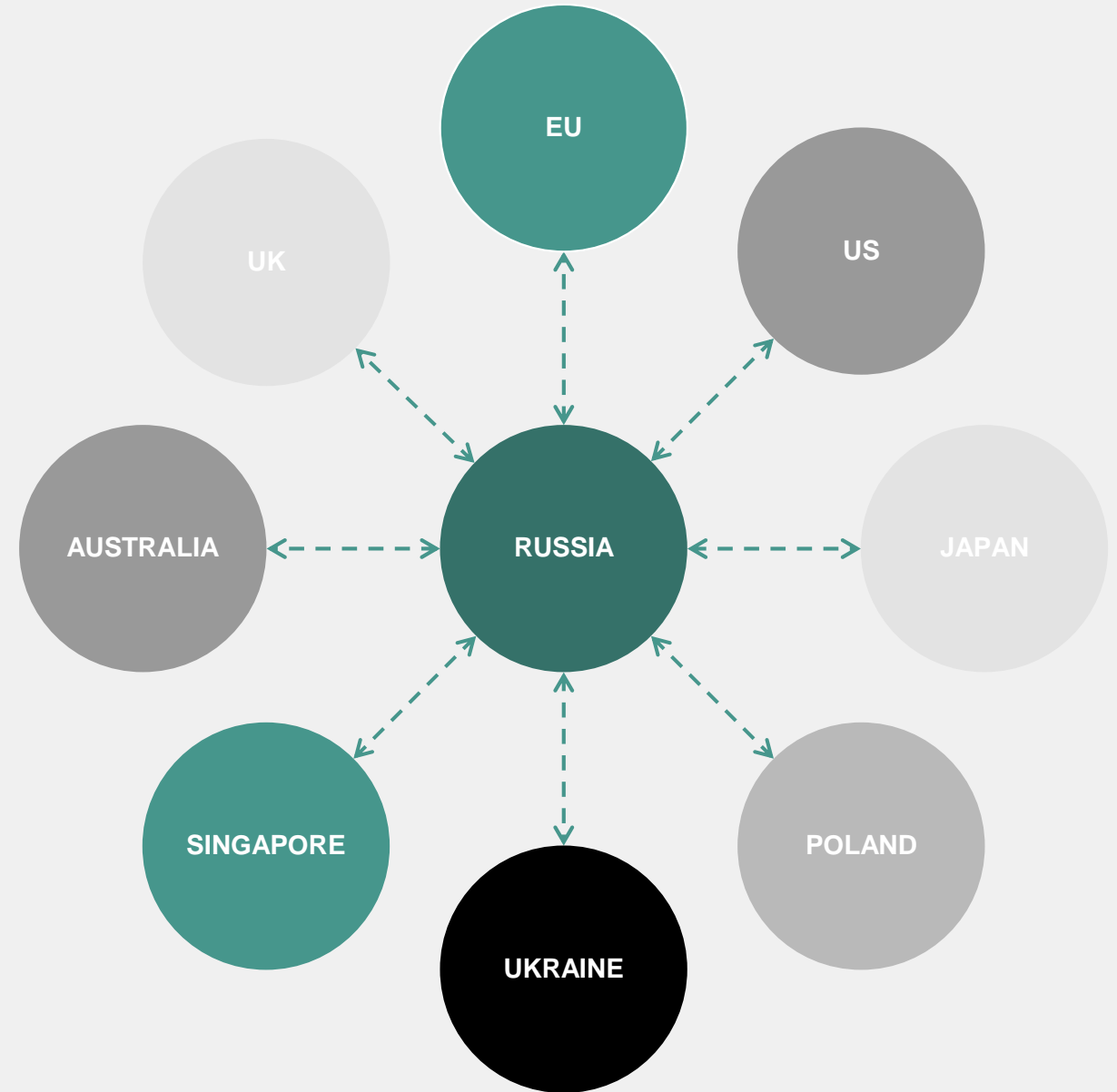
# Sanctions – global landscape

In response to Russian aggression in Ukraine, a number of countries adopted economic sanctions against Russia.

Russia responded by adopting restrictions on transactions between Russian residents and undertakings in "non-friendly" countries (i.e. countries that have imposed sanctions against Russia).

Sanctions are **wide** in scope, increasingly **complex**, frequently **updated** and, in many cases, with **extra-territorial effect**.

Sanctions imposed by different sanction authorities may have different reach (e.g. lists of sanctioned individuals/entities, activities, thresholds for certain transactions etc.).



# Sanctions – EU and Slovakia

EU enacted 5 sanction packages so far. Slovakia supported all of them.

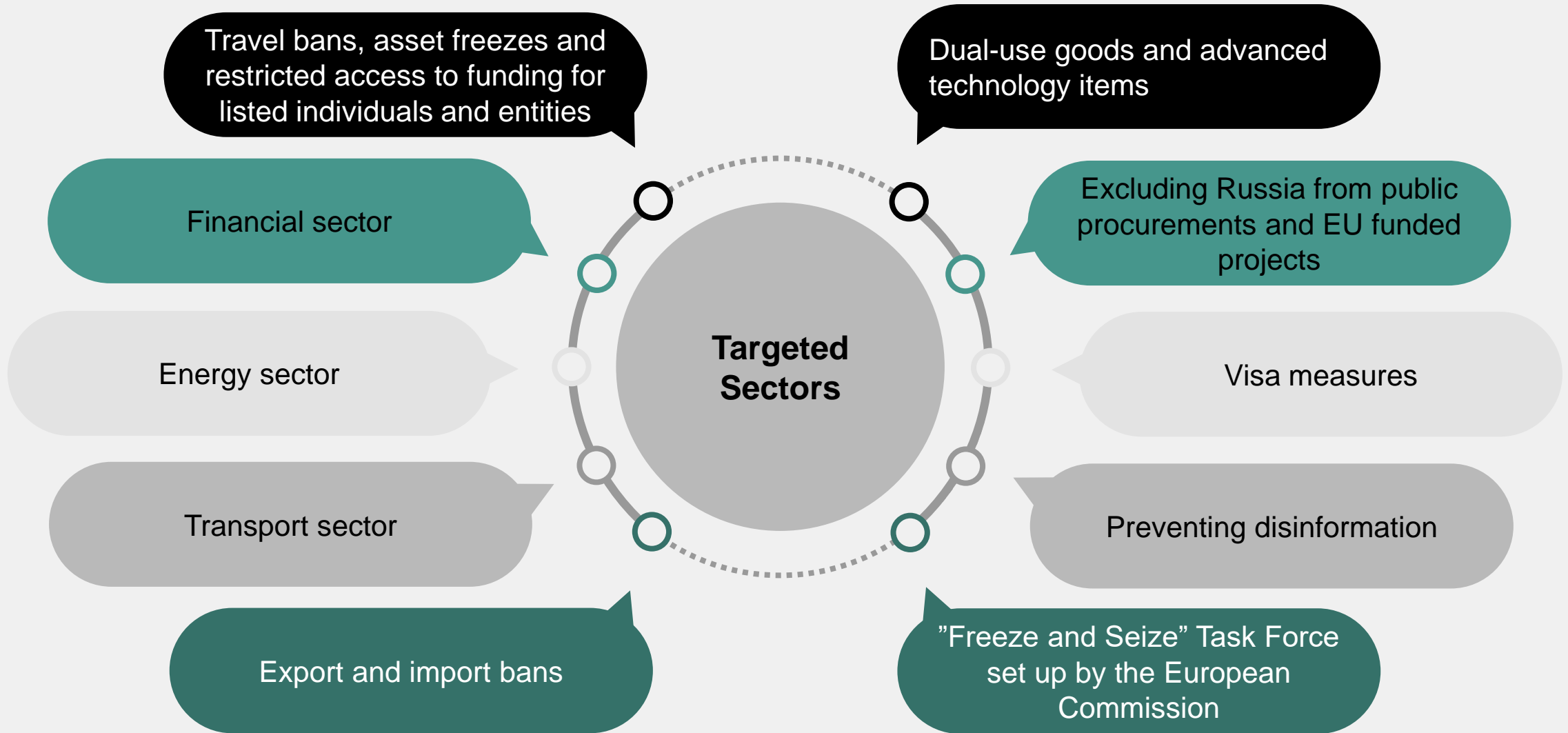
6th package currently under discussion. Proposed ban on export of Russian oil to EU countries. Given its heavy dependency on Russian oil, Slovakia considers asking for a temporary exemption from EU's wide approach.

Slovak Act No. 289/2016 Coll. on enforcement of international sanctions, as amended – local framework for enforcement of international sanctions in Slovakia.

Amendment to the Slovak Public Procurement Act effective as of 1 April 2022.



# Sanctions – targeted sectors



# EU Sanctions – Implications for financial sector

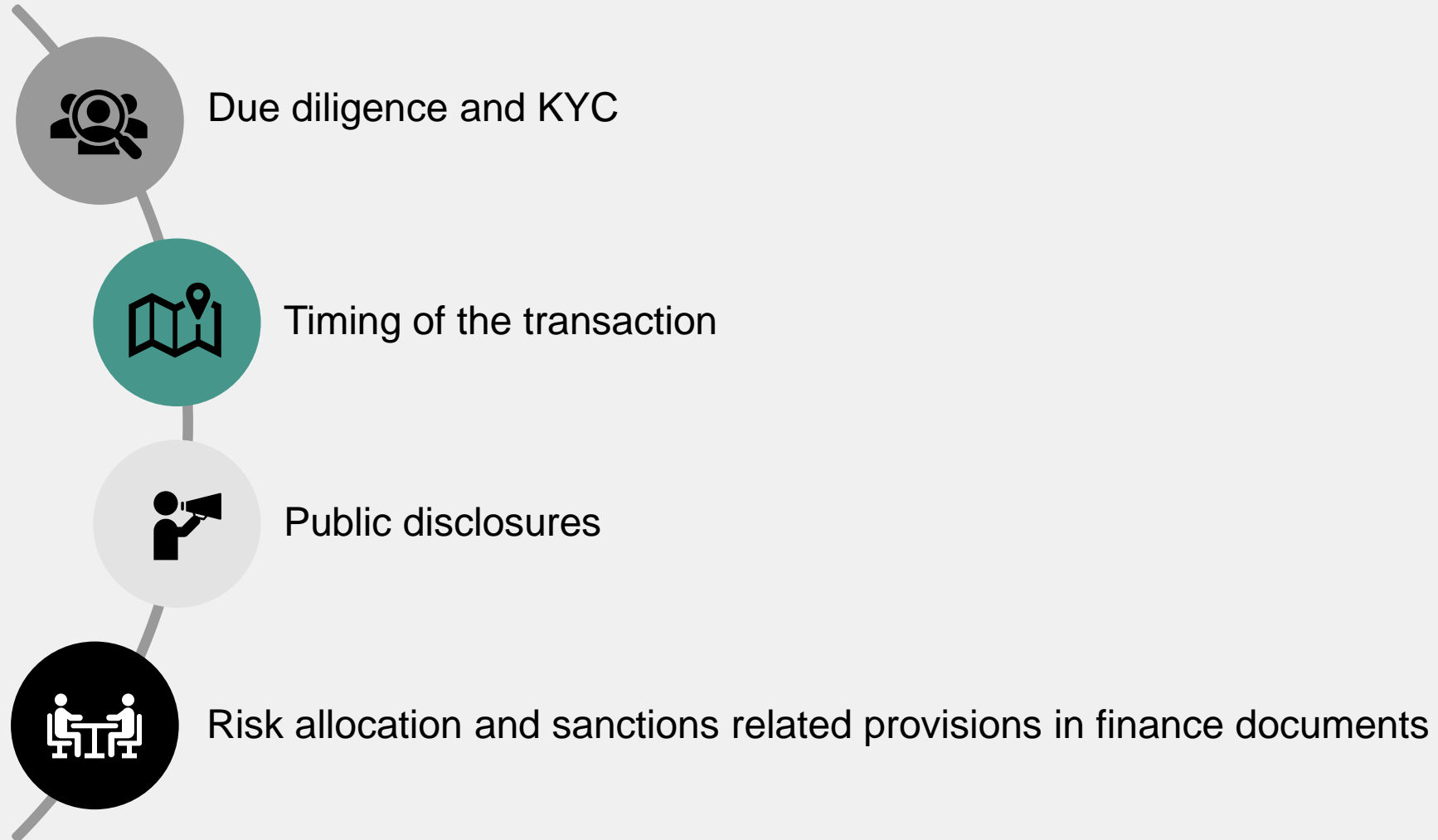
## OBJECTIVES

- Cutting Russia's access to western capital markets, increasing borrowing costs for its economy and gradually eroding Russia's industrial base deployed to wage war against Ukraine.

## KEY MEASURES

- A prohibition on any form of lending to and buying of securities issued by certain Russian banks and government (including the Russian Central Bank).
- Asset freezes and financing bans on a number of Russian banks.
- A ban on any transactions with certain Russian State-owned enterprises across different sectors.
- A prohibition on the export of banknotes (extended to all official EU currencies) to Russia.
- A ban on the rating of Russia's sovereign debt and the country's companies by EU credit rating agencies and the provision of rating services to Russian clients.
- A prohibition on providing high-value crypto asset services to Russia.
- A ban on providing advice on trusts to wealthy Russians, making it more difficult for them to store their wealth in the EU.
- Targeting the Russian elite by banning their big deposits in EU banks.
- Key Russian banks excluded from the SWIFT.
- Ban on investments in projects co-financed by the Russian Direct Investment Fund.

# Corporate finance transactions – points to consider



# Implications for finance documents – corporate loans

<b>TRANSACTION STRUCTURE</b>	<ul style="list-style-type: none"><li>• Is any of the parties subject to direct or indirect effects of sanctions?</li><li>• Can the transaction be settled in the currency in which it is denominated?</li><li>• What is the expected time gap between signing and closing of the loan transaction?</li></ul>
<b>USE OF PROCEEDS</b>	<ul style="list-style-type: none"><li>• What is the purpose of the facility? Are there sufficient safeguards for a lender that proceeds of the loan cannot be used in the breach of applicable sanctions?</li></ul>
<b>ILLEGALITY</b>	<ul style="list-style-type: none"><li>• Is it lawful for a Lender to perform its obligations as contemplated by a facility agreement or to fund or maintain its participation in any loan?</li><li>• Illegality = mandatory prepayment and cancellation of commitments. But what constitutes illegality?</li></ul>
<b>REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT</b>	<ul style="list-style-type: none"><li>• Any specific sanctions related representations, undertakings or EoDs?</li><li>• Are definitions of "Sanctionable Activity", "Sanctioned Territory/Country", "Sanctions Authority", "Sanctions List" etc. relevant, up to date and sufficiently clear?</li><li>• Given the extra-territorial effects of international sanctions, are there appropriate carve outs for the EU Blocking Regulation, Section 7 of the German Foreign Trade Ordinance or other similar anti-boycott measures in any relevant country?</li><li>• Any amendments required? If so, are they subject to Majority Lenders / All Lenders decision?</li><li>• Material Adverse Effect</li></ul>

# WT

# Thank you.



Deutsch-Slowakische  
Industrie- und Handelskammer  
Slovensko-nemecká  
obchodná a priemyselná komora

# Wolf Theiss