RUSSIA: EUROPEAN UNION AND UNITED KINGDOM SANCTIONS

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Overview

The EU and UK have adopted similar sanctions regimes with regard to Russia.

The relevant EU regulations are Council Regulation (EU) No 833/2014, Council Regulation (EU) No 208/2014, Council Regulation (EU) No 692/2014 and Council Regulation (EU) Regulation 269/2014.

The UK regulations relating to Russia are the The Russia (Sanctions) (EU Exit) Regulations 2019 (the "UK Russia Regulation") and the UK's Global Human Rights Sanctions Regulation 2020. The former was introduced following the UK's exit from the EU and largely replicates the terms of the EU regulations above.

Who do the EU and UK Sanctions apply to?

The scope of the EU and UK sanctions regimes are very similar in how they apply in their respective jurisdictions. Specifically, both apply:

(a) within the territory of the EU / UK respectively, including their airspace;

(b) on board any aircraft or any vessel under the jurisdiction of an EU Member State / the UK;

(c) to any person inside or outside the territory of the EU / UK, who is a national of an EU Member State / the UK;

(d) to any legal person, entity or body which is incorporated or constituted under the law of an EU Member State / the UK; and

(e) to any legal person, entity or body in respect of any business done in whole or in part within the EU / UK.

This will include Owners, Managers, Operators, Charterers and even vessels which are registered, incorporated, constituted or do business in whole or in part within the EU / UK.

The sanctions do not apply to non-EU / non-UK companies. However, if those companies take any action that is in breach of sanctions, associated EU / UK companies and employees who are EU / UK citizens may face penalties under the EU and UK regimes.

In addition, non-EU / non-UK companies may face sanctions in respect of any business they conduct that is done in whole or in part within the EU / UK. The sanctions would be limited to that particular business, and would not extend to exclusively non-EU / non-UK business carried out by those companies.

Prohibitions: Overview

The prohibitions of greatest significance to the shipping sector relating to Russia, Ukraine, Crimea and Sevastopol are:

A. Asset freezes

Under EU and UK regulations, all funds and economic resources belonging to, owned, held or controlled by listed parties are to be frozen. In addition, no funds or economic resources shall be made available, directly or indirectly, to or for the benefit of listed parties. The prohibition on making available funds and economic resources goes beyond prohibiting direct payments to listed parties. Indirect payments, such as payment to a non-listed party who then in turn pays the money to a listed party, are prohibited.

B. Territorial sanctions

Territorial sanctions on financing, trade in key sectors and investment in Crimea and Sevastopol.

C. Sectoral sanctions

Sectoral sanctions, specifically targeting the energy, oil exploration and production, dual use and arms sectors.

D. Financial sanctions

Financial sanctions aimed at restricting the access of certain Russian entities and key companies to EU and UK capital markets.

The EU measures were first adopted in 2014 and have been amended and developed since then. The UK measures were introduced following the UK exiting the EU and effectively replace the equivalent EU measures.

Further guidance on these restrictions can be found at pages 3 to 10 below.

Due diligence as a defence to liability

The EU and UK sanctions regulations implementing these prohibitions include a defence to liability where the person or entity concerned "*did not know, and had no reasonable cause to suspect",* that their actions would infringe the relevant prohibitions.

Conducting thorough investigations into any particular trade or transaction involving sanctioned jurisdictions is, therefore, critical; well-documented investigations and screenings may serve as a defence to unintentional sanctions violations.

Anti-circumvention

The EU and UK sanctions regulations contain anti-circumvention wording that provides that it *"shall be prohibited to participate, knowingly and intentionally, including indirectly, in activities the object or effect of which is to circumvent the prohibitions ...".* Therefore, even if a transaction is not in direct breach of sanctions, if it intended to circumvent sanctions, a violation and liability may still arise.

A. Dealing with Designated Parties: Asset Freezes

Background

The EU have implemented asset freeze measures against two different categories of person under its Russia related sanctions regime:

1. persons identified as responsible for the misappropriation of Ukrainian State funds and persons responsible for human rights violations in Ukraine, and natural or legal persons, entities or bodies associated with them; and

2. persons responsible for actions which destabilised, undermined or threatened the territorial integrity, sovereignty and independence of Ukraine, and natural or legal persons, entities or bodies associated with them.

The UK has implemented asset freezes on similar bases under the two UK regulations listed above.

What is prohibited?

1. Funds and economic resources belonging to, owned, held or controlled by designated parties are to be frozen.

   → *What does this mean?*

   This provision is largely aimed at banks and financial institutions, who must freeze all accounts belonging to, owned, held or controlled by designated parties.

2. No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of designated parties.

   → *What does this mean?*

   No payments can be made to any party designated by the EU and UK regimes, either directly or indirectly (e.g. making the payment to a non-designated party in the knowledge that they will pay it on to the designated party).

   No payments can be made "for the benefit of" a designated party. This includes, for example, making payments to a non-designated company which is owned or controlled by a designated party.

   The prohibition extends beyond the payment of monies to "economic resources". These are defined by the EU and UK regimes as "assets of every kind, whether tangible or intangible, movable or immovable, which are not funds, but which may be used to obtain funds, goods or services". This can include letters of credit, bills of lading and bills of sale.

   The wide scope of this provision emphasises the importance of thoroughly investigating all parties involved in a particular transaction or trade.

How can I avoid a breach?

Thorough investigations must be carried out in order to determine whether any party involved in a transaction is designated. If so, there is a risk that involvement in the transaction will amount to sanctionable conduct, even if the listed party is not a direct contractual counterpart.

The following investigations should be carried out:

(a) Identify all parties involved in the transaction, for example shippers, receivers, agents and any intermediaries.

(b) Investigations must go further that simply identifying the names of the parties and checking them against the asset freeze lists. The prohibitions extend to parties owned and controlled by designated persons. Where possible the corporate structure, ownership and control of all companies involved in the transaction should be investigated.

(c) Where a cargo is to be loaded or discharged in Russia, the relevant ports and terminals must be identified. Involvement in a trade which would require payment of port dues and other similar charges to a designated entity, either directly or indirectly, is likely to amount to a breach of sanctions.

It is also necessary to consider whether a non-designated party is owned or controlled by a designated party.

Under the UK sanctions regime, a party is considered to be "owned or controlled" by another party if:

(a) that person holds directly or indirectly more than 50% of the shares or voting rights in the company or the rights to appoint or remove a majority of the board of directors of that company; and

(b) it is reasonable, having regard to all the circumstances, to expect that that person would (if such person chose to) be able, in most cases or in significant respects, by whatever means and whether directly or indirectly, to achieve the result that affairs of the company are conducted in accordance with that person's wishes.

Under EU regulations, a party is considered to be "owned" by another party which is in possession of more than 50% of its proprietary rights, or which has a majority in it. There is no definitive meaning of "control" for the purposes of the EU sanctions regime – however, it is likely to follow similar principles to the UK position.

Are there any situations in which payments can be made to a designated party?

Under the EU and UK sanctions regulations, payments to designated parties may be authorised in certain specified circumstances. The majority of these are not relevant to a commercial situation and reflect circumstances such as satisfying the basic needs of designated parties, or the payment of fees or service charges for the maintenance of frozen funds.

Funds may be added to frozen accounts where they reflect payments due under contracts, agreements or obligations that were concluded or arose before the date on which the designated party in question was listed. Those funds must then be immediately frozen.

Under EU regulations, these payments must be authorised by the relevant authority in the Member State of the party making the payment. Those authorities are listed in the relevant EU regulations. Such payments

must also be notified to the EU Sanctions Committee, who must not object to the payment (subject to an exception under Article 6a of Regulation 269/2014 relating to payments to Crimean Sea Ports).

Under the UK Russia Regulation, similar exceptions apply and a licence to carry out any such payments must be obtained from the UK's HM Treasury.

Even if it appears that a particular payment may be permitted, it should never be assumed that authorisation will be given.

Are there any situations in which funds may be released from a frozen account?

In the EU, the competent Member State authorities may authorise release of frozen funds or economic resources where:

(a) the funds or economic resources are:

i. the subject of an arbitral decision rendered prior to the date on which the designated party was put on the asset freeze list, or of a judicial or administrative decision rendered in the EU, or a judicial decision enforceable in the Member State concerned, prior to or after that date; and

ii. will be used exclusively to satisfy claims secured by such a decision or recognised as valid in such a decision, within the limits set by applicable laws and regulations governing the rights of persons having such claims; and

iii. the decision is not for the benefit of a party on the asset freeze list and is not contrary to public policy in the Member State concerned.

(b) if a payment is due under a contract or agreement concluded, or an obligation that arose, before the party was designated provided that the payment will not be directly or indirectly received by a designated party.

Under UK regulations, similar exceptions to those of the EU listed above apply, save that a HM Treasury licence is required to authorise any such release of frozen funds or economic resources that fall under the above exceptions.

How can I find out which parties are designated?

A complete list of all parties designated by the EU regime can be found here.

A complete list of all parties designated by the UK regime can be found here.

B. *Territorial sanctions on financing, trade in key sectors and investment in Crimea and Sevastopol*

The EU and UK both impose substantial territorial sanctions on financing, trade in key sectors and investment in Crimea and Sevastopol. The EU restrictions are primarily set out in Regulation 692/2014 (as amended).

What is prohibited?

Subject to certain exceptions and possible permissions, the following activities are prohibited under the relevant EU restrictions:

(a) importing into the EU goods originating in Crimea or Sevastopol and providing, directly or indirectly, financing or financial assistance, as well as insurance and reinsurance related to those goods;

(b) acquiring any new or extending any existing participation in ownership of real estate located in Crimea or Sevastopol;

(c) acquiring any new or extending any existing participation in ownership or control of an entity in Crimea or Sevastopol, including acquiring in full of such entity, or the acquiring of share and other securities of a participating nature of such entity;

(d) granting or being part of any arrangement to grant any loan or credit of otherwise provide financing, including equity capital, to any entity in Crimea or Sevastopol, or for the documents purpose of financing such entity;

(e) creating any joint venture in Crimea or Sevastopol or with an entity in Crimea or Sevastopol;

(f) providing investment services directly related to the activities identified in paragraphs b) to e) above;

(g) selling, supplying, transferring or exporting, directly or indirectly listed equipment and technology relating to transport, telecommunications, energy, oil and gas to companies incorporated in Crimea or Sevastopol, or for use in that region;

(h) providing, directly or indirectly, technical assistance or brokering services, related to such listed goods and technology or related to the provision, manufacture, maintenance and use of such items to any natural or legal person, entity or body in Crimea or Sevastopol or for use in Crimea or Sevastopol;

(i) providing, directly or indirectly, financing or financial assistance related to such listed goods and technology to any natural or legal person, entity or body in Crimea or Sevastopol of for use in Crimea of Sevastopol;

(j) providing technical assistance, or brokering, construction or engineering services directly related to infrastructure in Crimea or Sevastopol in the transport, telecommunications, energy and prospection, exploration and production of oil, gas and mineral resources sectors, independently of the origin of the goods and technology;

(k) providing services directly related to tourism activities in Crimea or Sevastopol, including any ship providing cruise ship services, entering or calling at any of the following ports situated in the Crimean Peninsula, namely Sevastopol, Kerch, Yalta, Theodosia, Evpatoria, Chernomorsk and Kamysh-Burun.

The UK Russia Regulation largely replicates these restrictions in relation to the UK. On 1 January 2021, the Office of Financial Sanctions Implementation ("OFSI") issued a general licence permitting payments to the State Unitary Enterprise of the Crimean Republic "Crimean Sea Ports" for services provided at the ports of Kerch Fishery Port, Yalta Commercial Port and Evpatoria Commercial Port, as well as for services provided by Gosgidrografiya and by Port-Terminal branches of the Crimean Sea ports – thus effectively mirroring the EU exception referred to above.

How is the shipping industry affected?

Broadly speaking, the shipping industry is affected as follows (recognising that there are certain exceptions).

(a) UK / EU cruise ships should not call at Crimean Peninsula ports.

(b) UK / EU ships should not be involved in transporting out of or into Crimea or Sevastopol any items, which are the subject of a prohibition, as to do so would likely be viewed as participating in circumventing the prohibitions concerned.

(c) UK / EU entities and persons should avoid investing in Crimea or Sevastopol.

C. Sectoral Sanctions

The sectoral sanctions relate to the energy, oil exploration and production, dual use and arms sectors. The EU restrictions are primarily set out in EU Regulation 833/2014 (as amended). These are largely replicated in the UK restrictions at Part 5 of the UK Russia Regulation.

What is prohibited?

Oil exploration and production

The sectoral sanctions under this head focus on:

(a) oil exploration and production in waters deeper than 150 metres;

(b) oil exploration and production in the offshore area north of the Arctic Circle; or

(c) projects that have the potential to produce oil from resources located in shale formations by way of hydraulic fracturing (not exploration and production through shale formations to locate or extract oil from non-shale reservoirs).

collectively, the "**Restricted Projects**"

The EU / UK prohibitions relating to Restricted Projects are very similar. There are however certain subtle distinctions. These minor differences are not covered within this guidance note, but appropriate legal advice should be taken where any business potentially relating to a Restricted Project is contemplated.

That being the context, without prior authorisation from a competent Member State authority (or in the case of the UK, a licence) it is prohibited to:

(a) sell, supply, transfer or export, directly or indirectly certain items suited to Restricted Projects for use in Russia, including its Exclusive Economic Zone and Continental Shelf. These items can be found at Annex II of EU Regulation 833/2014. Under the UK Russia Regulation, these items are referred to as 'energy-related goods'.

(b) provide, directly or indirectly, associated / related services for Restricted Projects, such services being defined as drilling; well testing, logging and completion services and the supply of specialised floating vessels.

The European Commission has clarified that the term "specialised floating vessels" does not cover supply vessels such as Platform Supply Vessels, Anchor Handling Tug and Supply Vessels or Emergency Response Vessels. The UK Russia Regulation does not include an equivalent clarification but might be expected to be similarly interpreted.

There are also related prohibitions on technical assistance, financial assistance / services and brokering in relation to Restricted Projects.

Dual Use Goods and Technology

Under EU and UK regulations are again broadly the same as regard to dual use goods and technology. The principal prohibitions are as set out below.

Without prior authorisation from a competent Member State authority (or in the case of the UK, a licence) it is prohibited to:

(a) sell, supply, transfer export, directly or indirectly, dual use goods and technology, to any natural or legal person, entity or body in Russia or for use in Russia, if those items are or may be intended, in their entirety or in part for military use or for a military end user (where the end user is the Russian military, any dual use goods and technology procured by it shall be deemed to be for military use);

(b) sell, supply, transfer export, directly or indirectly, whether or not originating in the EU, dual use goods and technology, to certain defence sector entities, namely:

JSC Sirius, OJSC Stankoinstrument, OAO JSC Chemcomposite, JSC Kalashnikov, JSC Tula Arms Plant, NPK Technologii Maschinostrojenija, OAO Wysokototschnye Kompleksi, OAO Almaz Antey and OAO NPO Bazalt.

In relation to (b), certain exceptions relating important aeronautics and space industry may apply.

There are also related prohibitions on technical assistance, brokering services, financing or financial assistance in relation to (a) and (b) above.

The Common Military List

There are also prohibitions in relation to the Common Military List in the EU and Schedule 2 to the Export Control Order 2008 in the UK, which are less relevant in the context of this guidance.

How is the shipping industry affected?

Oil exploration and production

It is advised that shipping industry entities do not become involved in the carriage of 'energy-related goods' (as identified above) unless they are satisfied that the relevant authorisation in the EU or a Secretary of State licence in the UK has been obtained. An authorisation / licence may also be required for the insurance relating to such trade. This is required even where it is known that the 'energy-related goods' are not for use in a Restricted Project.

Shipping industry entities who operate specialised floating vessels should not supply them in this context because to do so would be a direct breach of the restrictions.

Dual Use Goods and Technology

Without authorisation / licence, or the application of a derogation, shipping industry entities should not become involved in carrying dual use goods to Russia

D. Financial sanctions aimed at restricting the access of certain Russian entities and key companies to EU capital markets

These restrictions can primarily be found in EU Regulation 833/2014 and Part 3 Chapter 2 of the UK Russia Regulation.

What is prohibited?

Subject to certain derogations, these financial measures aim to restrict the access of certain key Russian companies to EU and UK capital markets and credit.

In particular, they exclude five listed banks, Sberbank, VTB Bank, Gazprombank, Vnesheconombank (VEB) and Rosselkhozbank (listed at Annex III of Regulation 833/2014 and Schedule 2 of the UK Russia Regulation (the '**Sanctioned Banks**') from the following activities (because persons and entities subject to the EU and UK regimes are prohibited from providing the services which are the subject of the activities):

(a) selling or purchasing or dealing with transferable securities and money market instruments with a maturity exceeding 90 days, issued after 1 August 2014 to 12 September 2014, or with a maturity exceeding 30 days issued after 12 September 2014 and receiving related investment advice and assistance with such issues[1];

(b) receiving any new loans or credit with a maturity exceeding 30 days after 12 September 2014.[2]

These exclusions also apply to any legal person, entity or body established outside of the EU / UK which is more than 50% owned by a Sanctioned Bank, or a legal person or entity acting on behalf or at the direction of a legal person, entity or body established outside of the EU / UK which is more than 50% owned by a Sanctioned Bank or a Sanctioned Bank themselves.

Subject to certain derogations, six other Russian companies are also subject to such restrictions. They are OPK Oboronprom, United Aircraft Corporation, Uralvagonzavod, Rosneft, Transneft and Gazprom Neft (the '**Sanctioned Companies**') (as listed at Annexes V and VI of Regulation 833/2014 and Schedule 2 the Russia (Sanctions) (EU Exit) Regulations 2019).

As with the case with the Sanctioned Banks, the measures also affect non-EU / UK entities, which are more than 50% owned by a listed entity, or entities acting on behalf of or at the direction of a Sanctioned Company.

The restrictions on Sanctioned Companies mirror the restrictions on the Sanctioned Banks, save that they only apply to transferable securities and money-market instruments issued after 12 September 2014 or loans made after that date, in all cases where the maturity is over thirty days.

How is the shipping industry affected?

The EU Commission has clarified that payment terms/delayed payment for good or service will not be considered loans or credit and therefore these restrictions will not apply **unless** they are provided to circumvent the prohibition on loans/credit. The UK has confirmed it will also adopt this approach.

In effect, an entity in the shipping industry supplying a good or service to a targeted entity would only be in breach of the loan or credit restrictions, where its payment terms were outside of market (normal business

[1] The UK restriction is slightly simplified, applying to transferable securities and money market instruments with a maturity exceeding 30 days after 1 August 2014 only.
[2] The UK restriction applies to loans / credit granted after 31 January 2020 at 11.00 p.m (i.e. 'exit day').

practice) or had been substantially altered since 12 September 2014. If that was the case, a regulator may decide that, in fact, the shipping industry entity was conducting itself as a bank, thereby circumventing the prohibitions relating to new loans or credit.
