



RUSSIA: EUROPEAN UNION SANCTIONS

by The Swedish Club and Reed Smith LLP
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Who do EU Sanctions apply to?

EU sanctions apply:

- (a) within the territory of the EU, including its airspace;
- (b) on board any aircraft or vessel under the jurisdiction of a Member State;
- (c) to any person, inside or outside the territory of the EU, who is a national of a Member State;
- (d) to any legal person, entity or body which is incorporated or constituted under the law of a Member State; and
- (e) to any legal person, entity or body in respect of any business done in whole or in part within the EU.

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.

The sanctions do not apply to non-EU companies. However, if those companies take any action which is in breach of sanctions, associated EU companies and employees who are EU citizens may face penalties under the EU regime. In particular, EU parent companies may be sanctioned for the actions of their non-EU subsidiaries (although this will depend on the facts of any particular situation).

In addition, under point (e) above, non-EU companies may face sanctions in respect of any business they do which is done in whole or in part within the EU. Note that the sanctions would be limited to that particular business, and would not extend to exclusively non-EU 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

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. These provisions have a very wide scope, and are intended to go beyond affecting only the funds and economic resources 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 capital markets.

These measures were first adopted in 2014 and have been amended and developed since then.

Further guidance on these restrictions can be found at pages [3 to 12](#) below.

Due diligence as a defence to liability

The EU 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 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 is intended to circumvent sanctions, a violation and liability may still arise.

A. Dealing with Designated Parties: Asset Freezes

Background

The EU has 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 undermined or threatened the territorial integrity, sovereignty and independence of Ukraine, and natural or legal persons, entities or bodies associated with them.

The EU has also implemented travel restrictions on certain individuals under this second category. However, where these restrictions are intended to be primarily policed by the EU Member States it is not considered further in this guidance.

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 regime, 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 regime 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”.

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 than 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 Iran, 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.

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 regimes. Factors to take into account when determining whether a designated party controls a company will include:

- (i) the size of that party’s shareholding;
- (ii) the nature of the shares held (some may carry voting rights, whilst others may not);
- (iii) the composition of the board of directors;
- (iv) the provisions of the company’s Articles of Association; and
- (v) the designated party’s ability to exercise power over matters affecting the running of the company.

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

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.

NB: these payments must be authorised by the relevant authority in the Member State of the party making the payment. Those authorities are listed in Annex II to Regulation 208/2014 and Regulation 269/2014.

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

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).

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

Funds may be released from frozen accounts, with prior authorisation, in certain specified circumstances, including:

- (a) if the funds in question are the subject of a judicial, administrative or arbitral lien established before the party was designated, or of a judicial, administrative or arbitral judgment rendered prior to that date;
- (b) NB: these funds must be used exclusively to satisfy claims secured by such a lien or recognised in such a judgment; the lien or judgment must not be for the benefit of a designated party; recognising the lien or judgment must not be contrary to public policy in the relevant Member State; and the Sanctions Committee must have been informed.
- (c) if a payment is due under a contract or agreement concluded, or an obligation that arose, before the party was designated provided that payment will not contribute to any prohibited activity, and will not otherwise contravene the asset freeze provisions.

How can I find out which parties are designated?

A full up to date list of all parties designated by the EU regime can be found [here](#).

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

The EU's territorial sanctions on financing, trade in key sectors and investment in Crimea and Sevastopol are substantial. They 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:

- (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 or 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.

How is the shipping industry affected?

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

- (a) EU cruise ships should not call at Crimean Peninsula ports.
- (b) 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) 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. They are primarily set out in Regulation 833/2014 (as amended).

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).

That being the context, the prohibitions are as follows:

- (a) Without prior authorisation, it is prohibited to sell, supply, transfer or export, directly or indirectly certain items suited to the following categories of exploration and production projects in Russia, including its Exclusive Economic Zone and Continental Shelf, namely, oil exploration and production in waters deeper than 150 metres, oil exploration and production in the offshore area north of the Arctic Circle, or projects that have the potential to produce oil from resources located in shale formations by way of hydraulic fracturing.
- (b) In respect of the same projects, it is prohibited to provide, directly or indirectly, associated services for such projects, associated 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.

Dual Use Goods and Technology

The prohibitions are as follows.

- (a) Without a successful request for authorisation, it is prohibited to sell, supply, transfer export, directly or indirectly, whether or not originating in the EU, 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) Subject to an important aeronautics and space industry derogation, it is prohibited to 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.
- (c) It is also prohibited to provide related technical assistance, brokering services, financing or financial assistance to such companies.

The Common Military List

There are also prohibitions in relation to the Common Military List, which are less relevant in the context of this guidance.

How is the shipping industry affected?

Oil exploration and production

As a result of the provision in relation to circumvention, without being satisfied that a prior authorisation has been obtained, shipping industry entities should be reluctant to become involved in the carriage of the specified items identified above.

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, 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 Regulation 833/2014.

What is prohibited?

Subject to certain derogations, these financial measures aim to restrict the access of certain key Russian companies to EU 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) (the '**Sanctioned Banks**') from the following activities (because persons and entities subject to the EU regime 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 90 days issued after 12 September 2014 and receiving related investment advice and assistance with such issues;
- (b) receiving any new loans or credit with a maturity exceeding 30 days after 12 September 2014.

These exclusions also apply to any legal person, entity or body established outside of the EU 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 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).

As with the case with the Sanctioned Banks, the measures also affect non-EU 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?

Save for banks, participants in the shipping industry provide goods (for example if they are chandlers) or services, for example carrying a cargo, or chartering a vessel to someone else to carry a cargo.

When these restrictions were first introduced, there was considerable concern that, where an EU person had provided a good or service to a targeted entity, payment terms/delayed payment for such a good or service exceeding 30 days might be considered to constitute a new loan or credit.

However, 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.

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 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.

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