



## RUSSIA: EUROPEAN UNION

### Russia Sanctions: EU

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## I. To Whom Do EU Sanctions apply?

1. EU sanctions apply:<sup>1</sup>
  - 1.1. within the territory of the EU, including its airspace;
  - 1.2. on board any aircraft or vessel under the jurisdiction of a Member State;
  - 1.3. to any person, inside or outside the territory of the EU, who is a national of a Member State;
  - 1.4. to any legal person, entity or body which is incorporated or constituted under the law of a Member State; and
  - 1.5. to any legal person, entity or body in respect of any business done in whole or in part within the EU.
2. The sanctions do not apply to non-EU companies. Where, however, such a company is a non-independent subsidiary of an EU parent company, and takes any action which would be a breach of sanctions if undertaken by the EU Company, the EU Company (and its employees) runs the risk of being found to have attempted to circumvent EU sanctions. This is, of itself, a breach of EU sanctions.
3. In addition (see above) non-EU companies may be found to be in breach of EU sanctions in respect of any business that they do in whole or in part within the EU. It should be noted that the liability would attach to that particular business and would not extend to exclusively non-EU business carried out by those companies.

## II. Background

4. The Office of Financial Sanctions Implementation HM Treasury (“OFSI”), which is the UK competent authority for financial sanctions point out that financial sanctions “come in many forms as they are developed in response to a given situation,” see *OFSI FINANCIAL SANCTIONS Guidance, August 2017* (at p. 6) (“OFSI’s General Guidance”), OFSI General Guidance. OFSI identifies (see, pp. 5 to 6, OFSI’s General Guidance) the most common form of financial sanctions used recently as:
  - 4.1. Targeted asset freezes: these apply to named individuals, entities and bodies, restricting access to funds and economic resources. Someone subject to an asset

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<sup>1</sup> This is the standard EU formulation. In context, see Article 17, Council Regulation (EU) No 208/2014 of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine [2014] OJ L66/1; Article 17, Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine [2014] OJ L78/6; Article 10, Council Regulation (EU) No 692/2014 of 23 June 2014 concerning restrictive measures in response to the illegal annexation of Crimea and Sevastopol [2014] OJ L183/9; and Article 13, Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine [2014] OJ L229/1

freeze will appear on OFSI's and the EU's Consolidated List. See OFSI's Consolidated List and EU Sanctions List respectively.

- 4.2. Restrictions on a wide variety of financial markets and services: these can apply to named individuals, entities and bodies, specified groups, or entire sectors in the form of:
- investment bans
  - restrictions on access to capital markets
  - directions to cease banking relationships and activities
  - requirements to notify or seek authorisation prior to certain payments being made or received
  - restrictions on the provision of financial, insurance, brokering or advisory services or other financial assistance
- 4.3. Directions to cease all business: these will specify the type of business and can apply to a specific person, group, sector or country.

### **III. Summary of EU Sanctions related to Russia, Ukraine, Crimea and Sevastopol**

5. The EU sanctions regimes related to Russia, Ukraine, Crimea and Sevastopol comprise the following:
  - 5.1. Visa restrictions and asset freeze measures against (a) 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 (b) 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.
  - 5.2. Territorial sanctions on financing, trade in key sectors and investment in Crimea and Sevastopol.
  - 5.3. Sectoral sanctions in relation to the energy, oil exploration and production, dual use and arms sectors.
  - 5.4. Financial sanctions aimed at restricting the access of certain Russian entities and key companies to EU capital markets.
6. These measures were first adopted in 2014 and have been amended and developed since then.

### **IV. Legislative Framework**

7. There are eight applicable pieces of EU legislation, comprising four pairs by subject matter, each pair comprising one Decision and one Regulation. They are as follows.
  - 7.1. Council Decision 2014/119/CFSP of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine [2014] OJ L66/26. See Consolidation dated 5<sup>th</sup> March 2017.
  - 7.2. Council Regulation (EU) No 208/2014 of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine [2014] OJ L66/1. See Consolidation dated 5<sup>th</sup> March 2017.
  - 7.3. Council Decision 2014/145/CFSP of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine [2014] OJ L78/16. See Consolidation dated 21<sup>st</sup> November 2017.
  - 7.4. Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine [2014] OJ L78/6. See Consolidation dated 21 November 2017.

- 7.5. Council Decision 2014/386/CFSP of 23 June 2014 concerning restrictive measures in response to the illegal annexation of Crimea and Sevastopol [2014] OJ L183/70. See Consolidation dated 21<sup>st</sup> June 2017.
- 7.6. Council Regulation (EU) No 692/2014 of 23 June 2014 concerning restrictive measures in response to the illegal annexation of Crimea and Sevastopol [2014] OJ L183/9. See Consolidation dated 20 December 2014.
- 7.7. Council Decision 2014/512/CFSP of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine [2014] OJ L229/13. See Consolidation dated 2 December 2017.
- 7.8. Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine [2014] OJ L229/1. See Consolidation dated 2 December 2017.
8. This legislation does not provide for enforcement. In that regard, it is the responsibility of EU Member States to enact domestic legislation. Punishments range from fines to imprisonment. In addition, since May 2017, the domestic UK legislation has provided for the imposition of civil penalties. The significance of that for those subject to UK jurisdiction is that the State is only required to show that it is probable that breach has occurred (the civil standard of proof) rather than it is beyond reasonable doubt that a breach has occurred.
9. Those concerned about assessing their risks should, therefore, be careful to identify not simply the relevant EU principles but the enforcement provision in the domestic EU Member State enforcing legislation, to which they are subject.

## **V. EU Sanctions related to Russia, Ukraine, Crimea and Sevastopol**

### **A. Visa restrictions and asset freeze measures**

10. The EU has developed two related limbs of visa restrictions (which only apply under the second limb) and asset freeze measures against two different categories of person:
  - 10.1. 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;<sup>2</sup> and
  - 10.2. 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.<sup>3</sup>

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<sup>2</sup> Council Decision 2014/119/CFSP of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine [2014] OJ L66/26; and Council Regulation (EU) No 208/2014 of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine [2014] OJ L66/1.

<sup>3</sup> Council Decision 2014/145/CFSP of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine [2014] OJ L78/16; and Council Regulation

11. Under the first limb, which relates to the activity in Ukraine in relation to appropriation of state funds and breaches of human rights before the incidents in Eastern Ukraine and annexation of Crimea and Sevastopol, 15 persons (effectively in Ukraine) are the subject of an asset freeze.<sup>4</sup> Under the second limb, which relates to the invasion of parts of Eastern Ukraine and the decision of the Supreme Council of the Autonomous Republic of Crimea to hold a referendum its future status, 150 persons are the subject of a visa ban<sup>5</sup> and 150 persons and 38 entities are the subject of an asset freeze.<sup>6</sup>

1. **What is prohibited?**

- a) **Visa restrictions**

12. Under the visa restrictions, EU Member States must take measures to prevent the entry into, or transit through, their territories of the listed persons.<sup>7</sup>
13. This is subject to the following derogations:
  - 13.1. a Member State does not have to refuse its own nationals entry into its territory;<sup>8</sup>
  - 13.2. a Member State shall continue to be bound by and is able to comply with certain obligations under international law;<sup>9</sup> and
  - 13.3. exemptions, which a Member State may grant where travel may be justified on certain ground, including humanitarian need.<sup>10</sup>

- b) **Asset freeze measures**

14. Subject to certain derogations, the effect of the asset freeze measures is as follows:<sup>11</sup>

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(EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine [2014] OJ L78/6.

<sup>4</sup> Annex, Council Decision 2014/119/CFSP of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine [2014] OJ L66/26; and Annex, Council Regulation (EU) No 208/2014 of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine [2014] OJ L66/1.

<sup>5</sup> Annex, Council Decision 2014/145/CFSP of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine [2014] OJ L78/16.

<sup>6</sup> Annex, Council Decision 2014/145/CFSP of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine [2014] OJ L78/16; and Annex, Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine [2014] OJ L78/6.

<sup>7</sup> Article 1 (1), Council Decision 2014/145/CFSP of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine [2014] OJ L78/16.

<sup>8</sup> Article 1 (2), Council Decision 2014/145/CFSP of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine [2014] OJ L78/16.

<sup>9</sup> Article 1 (3), Council Decision 2014/145/CFSP of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine [2014] OJ L78/16.

<sup>10</sup> Article 1 (6), Council Decision 2014/145/CFSP of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine [2014] OJ L78/16.

<sup>11</sup> Article 1, Council Decision 2014/119/CFSP of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine [2014] OJ L66/26; Article 2, Council Regulation (EU) No 208/2014 of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine [2014] OJ L66/1; Article 2, Council Decision 2014/145/CFSP of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine [2014] OJ L78/16; and Article 2, Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive

- 14.1. all funds and economic resources belonging to, owned, held or controlled by any natural or legal person, entity or body as listed must be frozen; and
  - 14.2. no funds or economic resources shall be made available, directly or indirectly, to or for the benefit of natural or legal persons, entities or bodies as listed.
15. This is a wide prohibition because EU law widely defines “funds”, “economic resources”, “freezing of funds”, “freezing of economic resources”<sup>12</sup> and “making available”.
- 15.1. “Funds” means financial assets and benefits of every kind, including but not limited to (1) cash, cheques, claims on money, drafts, money orders and other payment instruments; (2) deposits with financial institutions or other entities, balances on accounts, debts and debt obligations; (3) publicly and privately traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivative contracts; (4) interest, dividends or other income on or value accruing from or generated by assets; (5) credit, rights of set-off, guarantees, performance bonds or other financial commitments; (6) letters of credit, bills of lading, bills of sale; and (7) documents showing evidence of an interest in funds or financial resources.
  - 15.2. “Economic resources” means assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but may be used to obtain funds, goods or services.
  - 15.3. “Freezing of funds” means preventing any move, transfer, alteration, use of, access to, or dealing with funds in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination or any other change that would enable the funds to be used, including portfolio management.
  - 15.4. “Freezing of economic resources” means preventing the use of economic resources to obtain funds, goods or services in any way, including, but not limited to, by selling, hiring or mortgaging them.
  - 15.5. “Making available” has been widely interpreted by the Courts, one of which held that the formal registration of a property purchased prior to the listing of one of the buyers under the EU’s Iran sanctions was prohibited because it constituted making economic resources available to a listed entity (Case C-117/06 *Gerda Mollendorf and Christine Mikkendorf-Niehus*).
16. The reach of the prohibition is even wider because, in broad terms the asset freeze will also apply to entities that are owned or controlled, directly or indirectly, by a designated person, even though they may not be designated by name in their own right. This is dealt with in the

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measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine [2014] OJ L78/6

<sup>12</sup> See, by very typical example, Article 1, (c), (d), (e) and (f), Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine [2014] OJ L78/6

OFSI Guidance at page 17 (see above) and the EU Best Practices Guide, see EU Best Practices Guide at paragraphs 62 to 68 (a rebuttable presumption is raised in relation to the undesignated entity).

17. A person shall not be liable for his or her actions if they did not know and had no reasonable cause to suspect, that their actions would infringe the EU measure.<sup>13</sup> In other words, liability under the EU regime is not strict. In addition, a person will be liable if he or she participates, knowingly and intentionally in activities the object or effect of which is to circumvent the identified legislative measures.<sup>14</sup> This is the circumvention offence, but, once again, liability is not strict and depends on the existence of knowledge.
18. It is the requirement of knowledge which results in the need to do due diligence screening of counterparties. An acceptable due diligence screening allows the person who has conducted it to say that they did not know, nor should they have known that their counterparty was a designated person or entity, or owned or controlled by a designated person or entity.

## **2. How is the shipping industry affected?**

### **a) Visa restrictions**

19. The implications for shipowners of carrying a person caught by this visa restriction are outside of the core purpose of this document. The requirement on EU Member States is to take measures to prevent the entry into, or transit through, their territories of the listed persons. The potential liability of a shipowner who was found with such a person on board their ship would depend squarely on the law of the particular EU Member State.

### **b) Asset freeze**

20. It is clear that shipowners and charterers must freeze funds and economic resources of designated persons or entities, or of entities which, although not designated are owned and controlled by designated persons or entities; and, in like manner, not make funds or economic resources available. Given the wide ranging nature of this prohibition as discussed above, participants in transactions that have a Ukraine or Russian connection must assess their risk and conduct due diligence, involving screening of all counterparties and entities and persons connected with the transaction (even where not a direct contractual counterparty).

## **3. How can I find out which parties are designated?**

21. So far as the measures in relation to misappropriation of assets and breaches of human rights are concerned, a list may be found here: [Current List of Designated Persons \(Misappropriation and Human Rights\)](#). So far as the measures in relation to sovereignty and territorial integrity are concerned, a list may be found here [Current List of Designated Persons \(Sovereignty and Territorial Integrity\)](#). These lists are produced by OFSI in the UK and

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<sup>13</sup> See, by example, Article 10 (2), Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine [2014] OJ L78/6.

<sup>14</sup> See, by example, Article 9, Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine [2014] OJ L78/6.

are updated. A list of all regime asset freeze targets may be found at Sanctions Consolidated List (OFSI).

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

22. The EU's territorial sanctions on financing, trade in key sectors and investment in Crimea and Sevastopol are wide and deep.

### **1. What is prohibited**

23. Subject to certain derogations and possible permissions, the following is prohibited:

23.1. 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;<sup>15</sup>

23.2. acquiring any new or extending any existing participation in ownership of real estate located in Crimea or Sevastopol;<sup>16</sup>

23.3. 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;<sup>17</sup>

23.4. 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;<sup>18</sup>

23.5. creating any joint venture in Crimea or Sevastopol or with an entity in Crimea or Sevastopol;<sup>19</sup>

23.6. providing investment services directly related to the activities identified in paragraph 23.2 to 23.5 above;<sup>20</sup>

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<sup>15</sup> Article 1, Council Decision 2014/386/CFSP of 23 June 2014 concerning restrictive measures in response to the illegal annexation of Crimea and Sevastopol [2014] OJ L183/70; and Article 2, Council Regulation (EU) No 692/2014 of 23 June 2014 concerning restrictive measures in response to the illegal annexation of Crimea and Sevastopol [2014] OJ L183/9.

<sup>16</sup> Article 2a(1)(a), Council Regulation (EU) No 692/2014 of 23 June 2014 concerning restrictive measures in response to the illegal annexation of Crimea and Sevastopol [2014] OJ L183/9.

<sup>17</sup> Article 2a(1)(b), Council Regulation (EU) No 692/2014 of 23 June 2014 concerning restrictive measures in response to the illegal annexation of Crimea and Sevastopol [2014] OJ L183/9.

<sup>18</sup> Article 2a(1)(c), Council Regulation (EU) No 692/2014 of 23 June 2014 concerning restrictive measures in response to the illegal annexation of Crimea and Sevastopol [2014] OJ L183/9.

<sup>19</sup> Article 2a(1)(d), Council Regulation (EU) No 692/2014 of 23 June 2014 concerning restrictive measures in response to the illegal annexation of Crimea and Sevastopol [2014] OJ L183/9.

<sup>20</sup> Article 2a(1)(e), Council Regulation (EU) No 692/2014 of 23 June 2014 concerning restrictive measures in response to the illegal annexation of Crimea and Sevastopol [2014] OJ L183/9.

- 23.7. 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;<sup>21</sup>
  - 23.8. 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;<sup>22</sup>
  - 23.9. 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 or for use in Crimea or Sevastopol;<sup>23</sup>
  - 23.10. 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;<sup>24</sup>
  - 23.11. 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.<sup>25</sup>
24. It is unsurprising in context, but important to repeat, that there will be no liability for breach of any of these provisions, if the person or entity concerned “did not know, and had no reasonable cause to suspect, that their actions would infringe the measures set out ...”<sup>26</sup> Equally important to repeat is 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 ...”<sup>27</sup>

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<sup>21</sup> Article 2b (1) and Annex II, Council Regulation (EU) No 692/2014 of 23 June 2014 concerning restrictive measures in response to the illegal annexation of Crimea and Sevastopol [2014] OJ L183/9.

<sup>22</sup> Article 2b (2) (a), Council Regulation (EU) No 692/2014 of 23 June 2014 concerning restrictive measures in response to the illegal annexation of Crimea and Sevastopol [2014] OJ L183/9.

<sup>23</sup> Article 2b (2) (b), Council Regulation (EU) No 692/2014 of 23 June 2014 concerning restrictive measures in response to the illegal annexation of Crimea and Sevastopol [2014] OJ L183/9.

<sup>24</sup> Article 2c (1), Council Regulation (EU) No 692/2014 of 23 June 2014 concerning restrictive measures in response to the illegal annexation of Crimea and Sevastopol [2014] OJ L183/9.

<sup>25</sup> Article 2d (1) and (2), Council Regulation (EU) No 692/2014 of 23 June 2014 concerning restrictive measures in response to the illegal annexation of Crimea and Sevastopol [2014] OJ L183/9. By this Article, the prohibition applies to ships flying the flag of a Member State or any ship owned and under the operation control of a Union Shipowner or any ship over which a Union operator assumed overall responsibility as regards its operation.

<sup>26</sup> Article 5, Council Regulation (EU) No 692/2014 of 23 June 2014 concerning restrictive measures in response to the illegal annexation of Crimea and Sevastopol [2014] OJ L183/9.

<sup>27</sup> Article 4, Council Regulation (EU) No 692/2014 of 23 June 2014 concerning restrictive measures in response to the illegal annexation of Crimea and Sevastopol [2014] OJ L183/9.

## 2. How is the shipping industry affected?

25. Broadly put, the shipping industry is affected as follows (recognising that there are certain derogations and exceptions).
  - 25.1. EU cruise ships should not call at Crimean Peninsula ports.
  - 25.2. 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.
  - 25.3. EU entities and persons should avoid investing in Crimea or Sevastopol.
26. The width and depth of the prohibitions are designed to send the message that Crimea and Sevastopol are places to be avoided.

## C. Sectoral Sanctions

27. The sectoral sanctions relate to the energy, oil exploration and production, dual use and arms sectors.

### 1. What is prohibited?

28. As is consistent with the rest of the EU regime, no liability shall arise if the person said to be in breach did not know, and had no reasonable cause to suspect that their actions would infringe the measures.<sup>28</sup> And, as is the case across the regime, it “shall be prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the prohibitions...”<sup>29</sup>

#### a) Oil exploration and production

29. The sectoral sanctions under this head focus on:<sup>30</sup>
  - 29.1. oil exploration and production in waters deeper than 150 metres;
  - 29.2. oil exploration and production in the offshore area north of the Arctic Circle; or
  - 29.3. 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).
30. That being the context, the prohibitions are as follows.

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<sup>28</sup> Article 10, Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine [2014] OJ L229/1.

<sup>29</sup> Article 12, Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine [2014] OJ L229/1.

<sup>30</sup> Article 3(3) and Article 3a (1)(a)(b) and (c), Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine [2014] OJ L229/1.

- 30.1. Without prior authorisation,<sup>31</sup> it is prohibited to sell, supply, transfer or export, directly or indirectly certain items<sup>32</sup> 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.
  - 30.2. 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.
31. 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.

**b) Dual Use Goods and Technology**

32. The prohibitions are as follows.
- 32.1. Without a successful request for authorisations in accordance with Council Regulation (EC) No 428/2009, 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).<sup>33</sup>
  - 32.2. Subject to an important aeronautics and space industry derogation,<sup>34</sup> it is prohibited<sup>35</sup> to sell, supply, transfer export, directly or indirectly, whether or not originating in the EU, dual use goods and technology, to these 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.

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<sup>31</sup> Article 3, Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine [2014] OJ L229/1.

<sup>32</sup> Annex II, Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine [2014] OJ L229/1.

<sup>33</sup> Article 2(1), Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine [2014] OJ L229/1.

<sup>34</sup> Article 2a(4), Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine [2014] OJ L229/1.

<sup>35</sup> Article 2a(1), Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine [2014] OJ L229/1.

32.3. It is also prohibited to provide related technical assistance, brokering services, financing or financial assistance.<sup>36</sup>

**c) The Common Military List**

33. There are also prohibitions in relation to the Common Military List, which are less than squarely relevant in context.

**2. How is the shipping industry affected?**

**a) Oil exploration and production**

34. 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.

35. 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 Article 3a(1).<sup>37</sup>

**b) Dual Use Goods and Technology**

36. Without proof of 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**

37. These restrictions are complicated, to the extent they were the subject of Guidance Note on the implementation of certain provisions of Regulation (EU) No 833/2014 concerning restrictive measures, which may be found at EU Guidance Note on 833/2014.

**1. What is prohibited?**

38. 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<sup>38</sup> 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):

38.1. 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

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<sup>36</sup> Article 2a(2), Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine [2014] OJ L229/1.

<sup>37</sup> Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine [2014] OJ L229/1.

<sup>38</sup> Annex III, List of institutions referred to in Article 5(a), Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine [2014] OJ L229/1.

September 2014, or with a maturity exceeding 90 days issued after 12 September 2014 and receiving related investment advice and assistance with such issues;<sup>39</sup>

- 38.2. receiving any new loans or credit with a maturity exceeding 30 days after 12 September 2014;<sup>40</sup>
39. These exclusions also apply to any legal person, entity or body established outside of the EU which more than 50% owned by Sberbank, VTB Bank, Gazprombank, Vnesheconombank (VEB) and Rosselkhozbank,<sup>41</sup> 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 more than 50% owned by Sberbank, VTB Bank, Gazprombank, Vnesheconombank (VEB) and Rosselkhozbank, or Sberbank, VTB Bank, Gazprombank, Vnesheconombank (VEB) and Rosselkhozbank themselves.<sup>42</sup>
40. Subject to certain derogations, six other Russian companies are also subject to such restrictions. They are OPK Oboronprom, United Aircraft Corporation and Uralvagonzavod;<sup>43</sup> and Rosneft, Transneft and Gazprom Neft.<sup>44</sup> As with the case with the Russian banks, the measures also affect non-EU entities, which are more than 50% owned by a listed entity,<sup>45</sup> or entities acting on behalf of or at the direction of sanctioned entities.<sup>46</sup> The restrictions on the six Russian companies mirror the restrictions on the banks, save that they only apply to transferable securities and money-market instruments issued after 12 September 2014<sup>47</sup> or loans made after that date,<sup>48</sup> in all cases where the maturity is over thirty days.
41. As is consistent with the rest of the EU regime, no liability shall arise if the person said to be in breach did not know, and had no reasonable cause to suspect that their actions would infringe the measures.<sup>49</sup> And, as is the case across the regime, it “shall be prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to

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<sup>39</sup> Article 5(1), Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine [2014] OJ L229/1.

<sup>40</sup> Article 5(3), Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine [2014] OJ L229/1.

<sup>41</sup> Article 5(1)(b), Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine [2014] OJ L229/1.

<sup>42</sup> Article 5(1)(b) and (c), Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine [2014] OJ L229/1.

<sup>43</sup> Article 5(2)(a) and Annex V, Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine [2014] OJ L229/1.

<sup>44</sup> Article 5(2)(b) and Annex VI, Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine [2014] OJ L229/1.

<sup>45</sup> Article 5(2)(c), Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine [2014] OJ L229/1.

<sup>46</sup> Article 5(2)(d), Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine [2014] OJ L229/1.

<sup>47</sup> Article 5(2), Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine [2014] OJ L229/1.

<sup>48</sup> Article 5(3), Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine [2014] OJ L229/1.

<sup>49</sup> Article 10, Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine [2014] OJ L229/1.

circumvent the prohibitions...”<sup>50</sup> This takes on a particular importance in the next section, where we briefly consider how this particular head of sanctions affects the shipping industry.

## 2. How is the shipping industry affected?

42. Save for the banks which still lend money to the shipping industry, the 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 the new loan or credit aspects of the regime were first implemented, 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. Several months after these provisions came into force, the EU Commission clarified in the Guidance Note to which we have already referred (at page 8, in answer to Q 30 posed there—this Guidance Note was subsequently amended and updated but this aspect remains the same):

*Payment terms/delayed payment for goods or services are not considered loans or credit for the purpose of Article 5 of the Regulation. The provision of payment terms/delayed payment may not be used, however, to circumvent the prohibition to provide new loans or credit under Article 5. Payment terms granted to the entities targeted by Article 5 which are not in line with normal business practice or which, since 12 September 2014, have been substantially extended may suggest circumvention. Such circumvention would be prohibited under Article 12 in combination with Article 5.*

43. This is an important point for the shipping industry. In effect, an entity in the shipping industry which was supplying a good or service to a targeted entity would only be in breach of the loan or credit provisions in Article 5, 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 might well decide that, in fact, the shipping industry entity was conducting itself as a bank, thereby circumventing the prohibitions relating to new loans or credit. The lesson is that banks should be left to the business of lending money.

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<sup>50</sup> Article 12, Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine [2014] OJ L229/1.